

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ELLIOT ARI KOZOLCHYK,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File No.
2023-50,298(17J)

FORMAL COMPLAINT FOR RECIPROCAL DISCIPLINE

The Florida Bar, complainant, files this Complaint against Elliot Ari Kozolchyk, respondent, under the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on December 18, 2009, and is subject to the jurisdiction of the Supreme Court of Florida.

2. In addition to membership with The Florida Bar, Respondent is also admitted to the bar for The United States District Court for the Southern District of Florida, subject to its jurisdiction.

3. Respondent is the sole practitioner at his law firm, Koz Law, P.A.

4. Respondent's practice is almost exclusively representing plaintiffs bringing claims against employers for unpaid wages and overtime pay under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq.

The FLSA allows plaintiffs to recover reasonable attorney's fees and costs, *see id.* § 216(b), but when an FLSA case is settled, the entire settlement agreement, including attorney's fees and costs, is subject to court approval.

5. Judicial review of attorney's fees are mandated by the FLSA “to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement.”

6. This is a Complaint for reciprocal discipline action. On July 17, 2019, then-Chief Judge Moore, submitted a Letter of Referral¹ (hereafter “Letter”) to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance Committee (the “Committee”), to investigate the respondent’s misconduct in multiple cases filed in the U.S. District Court for the Southern District of Florida and to conduct disciplinary proceedings.

7. The Letter summarizes instances of respondent’s misconduct in court, court filings, and court related events. The most common pattern of misconduct described in the Letter is that respondent "continued litigating cases after the defendant has offered or sent [respondent’s] client the full value of their claim," but "[respondent] then continue[d] to generate

¹ The Letter of Referral is attached as The Florida Bar’s “Composite Exhibit 1.”

unnecessary work ... so that he can later request [increased] attorney's fees for the additional time spent."

8. Following a hearing before the Committee², a Proposed Report and Recommendation was issued on August 15, 2022, which included findings of fact, conclusions, and proposed discipline. The Committee submitted a Final Report and Recommendation³ (hereafter "Final Report") to the Court on August 17, 2022.

9. An Order to Show Cause was issued to respondent on August 30, 2022, giving him an opportunity to respond to the Final Report and Recommendation. Respondent filed a Statement⁴ accepting the Committee's recommendations.

10. Pursuant to Rule 6(c)(2)(B)(v) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, Local Rules of the United States District Court for the Southern District of Florida, the Honorable Cecilia Altonaga, Chief United States District Judge submitted this matter to the Court for its consideration at a regularly scheduled Judges' Meeting held on October 6, 2022. Upon review of the Final Report and

² The Transcript from the June 28, 2022, hearing is attached as The Florida Bar's "Composite Exhibit 2."

³ The Final Report is attached as The Florida Bar's "Composite Exhibit 3."

⁴ Respondent's statement is attached as "The Florida Bar's "Composite Exhibit 4."

Recommendation, respondent's response, and attachments, by unanimous vote of all District Judges and Senior District Judges eligible to vote, the Court approved and adopted the Committee's Final Report and Recommendation in its entirety.

11. The Final Report found respondent in violation of five Rules governing The Florida Bar:

A. Rule 4-3.2 (Expediting Litigation). The Report listed "five instances when Mr. Kozolchyk 'continued litigating cases after the defendant has offered or sent his client the full value of their claim,' and 'Mr. Kozolchyk then continues to generate unnecessary work ... so that he can later request [additional] attorney's fees for the additional time spent.'"

B. Rule 4-4.4 (Failure to Respect Rights of Third Persons). The Final Report identified three instances when respondent engaged in "disrespectful conduct toward third persons involved in the litigation."

i. First, in *Mendez v. Model Row, Inc.*, No. 17-CV-81104-Rosenberg/Hopkins, the respondent made the defendant cry in open court. Respondent's client was awarded a monetary Final Judgment. The defendant could not afford

to make a lump sum payment and offered to make monthly payments until the Judgement was satisfied. Respondent refused to accept a payment plan from the defendant unless he made payments by credit card and imposed a 3% transaction fee, increasing the judgment.

ii. Next, in *Hernandez-Sabillon v. Naturally Delicious, Inc.*, No. 15-CV-80812- Rosenberg/Brannon, during a deposition, respondent attempted to make his own audio recording of a deposition over opposing counsel's objection. The disagreement resulted in both attorneys calling the judge's chambers. During the call, respondent and opposing counsel were loud, heated, and disruptive. They were ordered to cease such conduct, but respondent continued his misconduct. Respondent was sanctioned for his misconduct related to the deposition as well as misconduct in pleadings and other discovery violations. He was required to serve at a local soup kitchen.

iii. Then, in *Salvador v. Brico, LLC*, No. 17-CV-61508- Rosenberg/Seltzer, respondent and opposing counsel were “leveling” personal attacks against one another in

court filings. Judge Rosenberg told them to cease filing the attacks. Despite Judge Rosenberg's warning, respondent continued his misconduct.

C. Rule 4-3.1 (Meritorious Claims and Contentions). The Final Report found two instances of respondent presenting frivolous arguments to the Court to avoid judicial review of his fees in respective settlement agreements.

- i. First, in *Shuman v. Treatment Partners of America*, No. 18-81609- Middlebrooks/Brannon, respondent denied a settlement had been reached in an effort to avoid judicial review of his fees. The Court described respondent's argument that same was not subject to review as "nonsensical and a violation of respondent's duty of candor towards the Court," as well as "self-serving."
- ii. Then, in *Salvador*, respondent again claimed there was not a true settlement based on the fact the opposing party expressed its intention to appeal any fee award. Judge Brannon concluded respondent's position "was without support . . . and vexatious."

D. Rule 4-3.3 (Candor Toward the Tribunal). The Final Report identifies two instances in which respondent made misrepresentations to the Court. However, while the Final Report addressed both, only one was found to be actionable.

- i. The Final Report first addressed the *Olguin* case. After reviewing that case and respondent's explanation of the circumstances, it was determined respondent did not make a misrepresentation. Regardless of that finding, the Final Report stated , "although the Court did not explicitly find [respondent's] statements to be untrue, the Court's 'skepticism of those statements is striking,' and '[a]t the very least, it shows that [respondent] is comporting himself in a manner that has led to multiple judges to distrust his honesty and candor toward the court.'"
- ii. The instance when respondent was found to have made an actionable misrepresentation to the Court is in *Shuman*, when respondent tried to avoid judicial review of a settlement. In *Shuman*, respondent's claim that "no settlement had been reached" was a "misrepresentation of

fact,” and “a self-serving and false account of the facts and circumstances of the case” to avoid judicial review.

E. Rule 4-4.1(c)(e) (Truthfulness In Statements To Others).

Respondent was found to have made misrepresentations to a third person. In *Shuman*, respondent falsely “represented to opposing counsel that Judge Dimitrouleas allowed dismissals without prejudice without judicial review.” Actually, [r]espondent “was relying on a standard order Judge Dimitrouleas issues in FLSA cases, but he blatantly misrepresented the contents of that order.” The Final Report found respondent’s “misleading explanation of Judge Dimitrouleas’s order equivalent to an affirmative false statement because it caused his opposing counsel to attempt to dismiss an FLSA case without judicial review, in contravention of the law in this Circuit.” The Final Report further found that “[i]t strains credulity to argue respondent merely misunderstood the clear directions in Judge Dimitrouleas’s order, and it appears that these maneuvers were aimed at evading judicial scrutiny of the settlement agreement and his attorney’s fees.”

F. It is noteworthy that while the Committee did not charge respondent with Rule 4-8.4(d) (Misconduct), the Final Report did conclude, “[u]nquestionably, [respondent’s] misconduct and bad-faith litigation tactics interfered with the Court’s administration of justice and wasted the time and resources of the Court, his opposing counsel, the defendants his clients sued, his clients, and even [respondent] himself.”

12. On October 28, 2022, an Order⁵ was entered on the Final Report adopting it in its entirety.

13. For the above referenced behavior and rule violations, the Order imposed the following discipline:

A. Respondent was required to take two CLE courses within 60 days of entry of the Order as follows: (1) Episodes 1 through 4 of the "Your Honor Series," hosted by Paul Lipton, and (2) at least 2 hours on federal court practice; and provide an affidavit to the Committee attesting to timely completion of the CLE.

B. For a period of 12 months from entry of the Order, respondent was required to self-report to the Committee within 72 business

⁵ The October 28, 2022, Order is attached as The Florida Bar’s “Composite Exhibit 5.”

hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by respondent.

C. Within 30 days from entry of the Order, respondent was required to prepare and deliver letters of apology to Judges Moore, Middlebrooks, Dimitrouleas, Rosenberg, Seitz, Moreno, Goodman, Strauss; and retired Magistrate Judge Seltzer; and provide a copy of each letter to the [Ad Hoc] Committee⁶.

D. Enroll within 60 days from entry of the order by the Court in counseling for anger management for a minimum of 25 hours, with the course to be approved in advance by the Committee.

14. A Sub-Committee was tasked with monitoring respondent's compliance with the Order and reporting to the Court regarding same.

15. On February 13, 2023, respondent disclosed to the sub-committee that he failed to timely report that he was sanctioned (to pay opposing counsel's attorney's fees) in *Keefe v. Britt's Bow Wow Boutique, Inc.*, Case No. 22-cv-62138 for discovery related misconduct. There was also an allegation that respondent lacked candor to the Court in that same

⁶ The apology letters are attached as "Composite Exhibit 6."

case for filing a Certificate of Compliance when he was not in compliance with the rules.⁷

16. On March 1, 2023, the Sub-Committee submitted its first status report⁸ finding respondent was compliant. The report included the February 13, 2023, disclosure. Respondent made no further disclosures until August 30, 2023, and September 5, 2023.

17. Following the March 1, 2023, report, the Committee became aware of other instances where respondent had not complied with the Order.

18. The Committee required respondent to appear for a hearing held on November 9, 2023,⁹ to address respondent's additional violations of the October 28, 2022, Order. After receiving the Notice of Hearing, respondent submitted at least eight more disclosures of his subsequent misconduct in violation of the Order.

⁷ Respondent filed Interrogatories that were not signed nor under oath, and as such were not in compliance.

⁸ The Committee's Report is attached as The Florida Bar's "Composite Exhibit 7."

⁹ The hearing date is later referenced to have taken place on November 20, 2023. Regardless, the hearing transcript is attached as The Florida Bar's "Composite Exhibit 8." During the hearing, respondent admitted he failed to self-report several instances of subsequent misconduct. See page 7 (admissions) and also pp. 10-17, re: *Martinez v. Durcon Construction, LLC*, 23-cv-60722, Rule 11 Motion for Sanctions against Respondent.

19. Between the notice of hearing and the actual hearing, respondent admitted that he did not report a client's case¹⁰ that was dismissed because he failed to prosecute the matter.

20. During the hearing, the Committee found that respondent failed numerous times to properly and timely self-report subsequent misconduct in violation of the Order. The Committee determined those findings required an "extension of the Committee's monitoring of his professional activities."

21. Also, during the hearing, the Committee "overwhelmingly" concluded respondent's number of open cases (44), his opinion of how many cases his office could realistically handle, and his problematic office management procedures contributed to respondent's missed deadlines, created avoidable conflict with opposing counsel, and contributed to his failure to (properly and timely) self-report to the Committee.

22. On December 15, 2023, the Committee issued a Proposed Supplemental Report and Recommendation giving respondent 14 days to respond to same. Respondent filed a Response,¹¹ (hereafter "Second Statement"). A hearing was held, following which, the Committee submitted

¹⁰ *Reddish v. Epoca Corp.*, Case No. 17-21206-CIV-Williams, 2023 WL 5831459 (S.D. Fla., Sept. 7, 2023).

¹¹ Respondent's Response is attached as The Florida Bar's "Composite Exhibit 9."

a Final Supplemental Report and Recommendation (hereafter "Final Supplemental Report")¹² on January 25, 2024.

23. The Final Supplemental Report recommended the following:

A. [Respondent] should be publicly reprimanded for his repeated failure to comply with the Court's October 28, 2022, Order.

Significantly, this finding correlates to a finding that respondent violated Rule 4-3.4(c) of the Rules Regulating the Florida Bar.

B. For a period of 24 months, *nunc pro tune* to October 29, 2023, [respondent] must self-report to the Committee within 3 business days of the entry of any order describing or relating to any problematic or unprofessional conduct by respondent. A monthly report should be provided to the Committee to ensure that no disclosures have been missed and if so, and explanation should be provided concerning why the deadlines was missed. At the request of the Committee, [respondent] shall appear before the Committee to answer questions regarding his compliance with this section. At the end of 12 months, the

¹² A copy of the Final Supplemental Report is attached as The Florida Bar's "Composite Exhibit 10."

Committee may recommend that the reporting requirements be modified, be discontinued, or be extended.

C. Within 45 days [respondent] shall, at his cost, register and take part in The Florida Bar's Diversion/Discipline Consultation Service ("DDCS") which conducts administrative management reviews of law office processes and procedures as directed by a grievance committee. Once retained, DDCS should communicate with the Committee so DDCS can fully understand the concerns of the Committee. The DDCS report shall be submitted to the Committee upon completion, and the Committee may make such other recommendations to the Court as it may determine to be necessary and beneficial to [respondent's] practice in the Southern District.

24. An Order to Show Cause was issued on January 25, 2024, directing respondent to Show Cause why the Final Supplemental Report and Recommendation should not be adopted by the Court.

25. On February 12, 2024, respondent filed a response accepting the Committee's findings and recommendations.

26. On May 16, 2024, after a review of the Final Supplemental Report, by unanimous vote of all District Judges and Senior Judges eligible

to vote in attendance at the meeting, the Court approved and adopted the Committee's Final Supplemental Report in full.

27. On June 4, 2024, an Order was entered adopting the Final Supplemental Report in full.¹³ That Order noted the "Court's inherent power to regulate membership in its bar for the protection of the public interest," and that a "federal court has the power to control admission to its bar and to discipline attorneys who appear before it."

28. On July 9, 2024, another Order¹⁴ was entered requiring the respondent to appear before Chief Judge Altonaga On August 20, 2024, at 8:30 AM to receive respondent's public reprimand.

29. By operation of Rule 3-4.6, Rules Regulating The Florida Bar, the Final Report and Recommendation, the Final Supplemental Report and Recommendation, and the Orders adopting those Reports constitute conclusive proof of the misconduct in this disciplinary proceeding.

WHEREFORE, The Florida Bar respectfully requests that respondent be appropriately disciplined in accordance with the Rules Regulating The Florida Bar.

¹³ The June 24, 2024, Order is attached as The Florida Bar's "Exhibit 11."

¹⁴ The July 9, 2024, Order is attached as The Florida Bar's "Composite Exhibit 12."



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CERTIFICATE OF SERVICE

I certify that this document has been filed via the Florida Courts E-Filing Portal with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via the portal to David Bill Rothman, Counsel for Respondent, at dbr@rothmanlawyers.com; and that a copy has been furnished by United States Mail via certified mail No. 7020 1810 0000 0813 5369 return receipt requested to David Bill Rothman, whose record bar address is 200 S. Biscayne Blvd., Ste. 2770, Miami, FL 33131-5300 and to Sharla Manglitz, Bar Counsel, via email at smanglitz@floridabar.org, on this 26th day of November, 2024.



Patricia Ann Toro Savitz, Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

The trial counsel in this matter is Sharla Manglitz, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II 1300 Concord Terrace Ste. 130 Sunrise FL 33323, (954) 835-0233 and smanglitz@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

NOTICE OF MANDATORY ELECTRONIC FILING

All parties must file all pleadings, motions, and notices in this matter electronically, with a copy to the referee, through the Florida Courts E-Filing Portal, www.myflcourtagency.com, under Rule Regulating The Florida Bar 3-7.6(h)(5)(A) and (B).

MANDATORY ANSWER NOTICE

RULE REGULATING THE FLORIDA BAR 3-7.6(h)(2) PROVIDES THAT A RESPONDENT MUST ANSWER A COMPLAINT.

July 17, 2019

Chief Judge K. Michael Moore
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 13-1
Miami, Florida 33128

Dear Chief Judge Moore:

We write you asking that you consider referral of attorney Elliot Kozolchyk of Koz Law, P.A. to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the "Committee") for investigation and disciplinary proceedings. Based on Mr. Kozolchyk's conduct in several cases before us, we believe that he has violated several Rules of Professional Conduct, Chapter 4 of the Rules Regulating the Florida Bar, as set forth below. Moreover, a review of his cases throughout the Southern District of Florida shows that the misconduct exhibited before us is not unique, but is a hallmark of Mr. Kozolchyk's legal practice.

Mr. Kozolchyk is the sole practitioner at his law firm, Koz Law, P.A., a labor and employment law firm that specializes in claims for unpaid wages and overtime pay.¹ His legal practice seems to consist primarily of bringing cases on behalf of plaintiffs under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* The FLSA allows for the recovery of reasonable attorney's fees and costs by plaintiffs. *See id.* § 216(b). However, when a case brought under the FLSA is resolved by settlement agreement, the entire settlement agreement, including the recovery of attorney's fees and costs, is subject to court approval. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). The Eleventh Circuit has stated that judicial review of attorney's fees, in particular, is mandated by the FLSA "to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement." *Silva v. Manuel*, 307 Fed. Appx. 349, 351 (11th Cir. 2009).

Our central concern regarding Mr. Kozolchyk's conduct is that his litigation strategies seem driven more by his desire to collect attorney's fees than by concern for his clients. To that end, we have seen him make misrepresentations to the Court in violation of Rule 4-3.3, delay litigation so as to increase his own fees in violation of Rule 4-3.2, and make material misrepresentations to opposing counsel in violation of Rule 4.4-1. Based on this conduct—described in greater detail below—we think it appropriate for the Court to refer him to the Committee for disciplinary proceedings.

¹ *See* Firm Background, Koz Law, <https://www.paychecklawyers.com/firm-background> (last visited June 25, 2019).

I.

On May 22, 2019, Judge Middlebrooks held calendar call in *Shuman v. Treatment Partners of America*, Case No. 18-81609-Middlebrooks/Brannon, in which Mr. Kozolchyk represented plaintiff Felicia Shuman ("Shuman"). Shuman claimed that, pursuant to the FLSA, defendants Treatment Partners of America LLC and Scott Frankel owed her \$522.00 in unpaid minimum wages, \$122.00 in unpaid overtime wages, and \$644.00 in liquidated damages, amounting to a total of \$1,288.00 in damages. Approximately two weeks after the Complaint was filed, in December 2018, Plaintiff received a payroll check for \$1,075.12 from defendant Treatment Partners of America. At the calendar call, the defense counsel asserted that the check had actually been sent to Shuman before her lawsuit was even filed.

Despite the payment to Shuman for all of the wages she claimed she was owed, the case remained open and unresolved. Three months after Shuman received her payroll check, Mr. Kozolchyk filed a motion in limine, ostensibly to prepare for trial. The parties were not, however, litigating Shuman's entitlement to liquidated damages or the precise terms of a general release; the only dispute remaining between the parties at the calendar call was whether they had reached a settlement agreement for Shuman's remaining claims for attorney's fees and costs. The parties had agreed that the defendants would pay Mr. Kozolchyk \$2,500.00 for Shuman's claims for fees and costs in exchange for the dismissal of the case without prejudice. While the defendants believed that this exchange constituted a settlement agreement subject to judicial review, Mr. Kozolchyk represented to the Court that the agreement did not constitute a settlement agreement. Mr. Kozolchyk insisted that the exchange of fees for dismissal did not constitute a settlement agreement because the dismissal of Shuman's claims was without prejudice.

As the Court stated on the record at the calendar call, Mr. Kozolchyk's argument—that the exchange of money for dismissal did not constitute a settlement agreement—was both disingenuous and a means for the parties to evade judicial review of the settlement agreement. Mr. Kozolchyk argued that the money paid to Shuman immediately after the Complaint was filed and the \$2,500.00 paid to Mr. Kozolchyk to dismiss the lawsuit were completely unrelated to one another. He further argued that, because the dismissal was without prejudice, Shuman relinquished none of her legal rights; thus, the agreement fell outside the ambit of the Eleventh Circuit's mandate that district courts must review compromises under the FLSA for fairness. These arguments are nonsensical and a violation of Mr. Kozolchyk's duty of candor towards the Court. The exchange that took place between the parties—in which the defendants paid Mr. Kozolchyk \$2,500.00 for the dismissal of Shuman's claims—is the very definition of a settlement agreement—in which one party pays the other to resolve a lawsuit without further litigation. In emails between Mr. Kozolchyk and defense counsel, Mr. Kozolchyk had even written that

“Plaintiff accepts the [payment].”² For Mr. Kozolchyk to argue repeatedly before the Court that such an exchange did not constitute a settlement agreement was disingenuous and self-serving.

Moreover, Mr. Kozolchyk has violated his duty of truthfulness to third parties in order to convince his opposing counsel that a dismissal without prejudice did not require judicial review. Defense counsel informed the Court that Mr. Kozolchyk had represented to him that United States District Judge William P. Dimitrouleas allows dismissals without prejudice without judicial review. Mr. Kozolchyk clarified that Judge Dimitrouleas issues a standard order in cases brought under the FLSA, which discusses the circumstances in which Judge Dimitrouleas allows parties to dismiss such a case without prejudice. Judge Dimitrouleas’s order reads:

[A]ny voluntary dismissal or stipulation of dismissal will require the parties to submit a settlement agreement for judicial review and approval. Further, the Court finds that in order to effectuate the Eleventh Circuit’s requirements dictated by *Lynn’s Food*, even dismissals without prejudice require the Court to review any settlement agreement that has been reached by the parties. . . .

The Court recognizes that there may be situations in which the plaintiff chooses to voluntarily dismiss the case, even if there has been *no settlement or compromise*.

- (1) In that event, the court will require the notice of voluntary dismissal to affirmatively state that (a) no settlement agreement has been reached, *and* (b) the plaintiff has voluntarily chosen to abandon the FLSA claim at this time.
- (2) The Court will construe such a dismissal to be without prejudice, regardless of the language used in the notice. Plaintiff will be able to re-file or otherwise pursue the claim in the future, subject to the statute of limitations.³

Judge Dimitrouleas’s order explicitly requires parties to file any settlement agreement for the court’s review, even where the parties seek to dismiss the action without prejudice. The order allows for dismissal without prejudice *only* where there has been no settlement or compromise. *Shuman*, however, did not present such a situation—the exchange of money for the dismissal of the remaining claims is precisely the type of negotiated agreement that, pursuant to Judge Dimitrouleas’s order, would be subject to the court’s review and approval. Mr. Kozolchyk used Judge Dimitrouleas’s order to do exactly what the order disallows: to label a settlement agreement as a “stipulation of dismissal without prejudice” in order to avoid the Court’s review of the settlement agreement. In the process, he also appears to have misrepresented the contents of Judge Dimitrouleas’s standard FLSA order to his opposing counsel in order to secure opposing counsel’s agreement to file a stipulation of dismissal. While a lawyer does not have a duty to inform opposing counsel of all relevant facts, Mr. Kozolchyk’s misleading explanation of Judge

² Case No. 18-81609-DMM, DE 29, Exhibit A.

³ *Koenitzer v. ATCI Comms., Inc.*, Case No. 18-61257-CIV-Dimitrouleas/Snow (S.D. Fla. June 7, 2018) (emphasis added) (citations omitted).

Dimitrouleas's order is equivalent to an affirmative false statement because it caused his opposing counsel to attempt to dismiss an FLSA case without judicial review, in contravention of the law in this Circuit.

II.

Judge Rosenberg's experiences with Mr. Kozolchik mirror Judge Middlebrooks' experiences—it is typical for a defendant to offer as quickly as possible to pay the entire damages demand of Mr. Kozolchik's client, but the case does not resolve or settle until Mr. Kozolchik has generated a significant amount of fees and costs. A recent example is *Soto v. Audiology Distribution LLC*, No. 19-CV-80339-ROSENBERG/REINHART. In *Soto*, the defendant quickly delivered settlement checks to Mr. Kozolchik for the full amount the plaintiff sought. The parties agreed to settlement terms as the terms applied to Mr. Kozolchik's client. Rather than deliver the settlement checks to his client, however, Mr. Kozolchik took the position that there was no settlement agreement between the parties because the defendant refused to agree that it would not seek sanctions against Mr. Kozolchik *personally*. Because the parties could not resolve the possibility of sanctions against Mr. Kozolchik personally (due to his delay in settling the case and his overall conduct), Mr. Kozolchik refused to concede that there was a settlement agreement as to *his client*, which put the case into a state of limbo where the defendant was uncertain how to proceed and where the settlement checks remained in Mr. Kozolchik's office. Judge Rosenberg is still, at present, attempting to bring *Soto* to a conclusion.

Another example is *Mendez v. Model Row, Inc.*, No. 17-CV-81104-ROSENBERG/HOPKINS. *Mendez* represented the fourth time that Mr. Kozolchik sued the defendant.⁴ Just as in the three preceding cases, the defendant in *Mendez* offered to settle the case. The parties reached a settlement agreement (at least in principle) because the plaintiff attempted to make an offer of judgment and the defendant attempted to accept the offer. Nonetheless, the parties were unable to bring the case to a conclusion, so Judge Rosenberg required the parties to appear in person at a hearing. At the hearing, the parties informed Judge Rosenberg that they were in agreement and that the terms of the settlement agreement could be read into the record, but the defendant informed Judge Rosenberg that because he had been sued by Mr. Kozolchik on three prior occasions, he no longer had the funds to make payment. Thus, the plaintiff agreed that the defendant could make monthly payments in the future to satisfy its debt. Mr. Kozolchik, however, did not agree to accept future monthly payments towards his own fees and costs. Faced with that situation, the defendant informed Judge Rosenberg that he had no other way to end the case other than to pay Mr. Kozolchik's fees with a credit card. Upon learning that the defendant intended to pay with a credit card, Mr. Kozolchik declared that his fee demand would increase by 3 percent.

⁴ *Martinez v. Model Row, Inc.*, No. 16-CV-81636; *Herrera v. Model Row, Inc.*, No. 17-CV-80241; *Lopez v. Model Row, Inc.*, No. 17-CV-80677.

At this point, the defendant began to weep in open court but, stating he had no other alternative, he agreed that Mr. Kozolchyk's fees could be increased by three percent.

Mr. Kozolchyk's behavior is worthy of consideration in other regards as well. Mr. Kozolchyk's behavior and communications towards opposing counsel are consistently problematic. In *Hernandez-Sabillon v. Naturally Delicious, Inc.*, No. 15-CV-80812-ROSENBERG/BRANNON, Mr. Kozolchyk attempted to make his own audio recording of a deposition over opposing counsel's objection. The argument that ensued resulted in both attorneys calling Judge Brannon's chambers on separate lines. Because the phone calls were on separate lines, each attorney's phone call was answered by a separate law clerk. The audio level of the attorneys on the phone was so loud, and so heated, that each law clerk could hear the opposing attorney yelling on the phone to the other law clerk. These phone calls, together with Mr. Kozolchyk's general behavior in discovery, resulted in Judge Brannon sanctioning Mr. Kozolchyk by requiring him to serve at a local soup kitchen.⁵

In *Salvador v. Brico, LLC*, No. 17-CV-61508-ROSENBERG/SELZER, Mr. Kozolchyk and opposing counsel repeatedly attacked each other in court filings, often via the attachment of e-mails of their correspondence. The fighting between counsel ultimately resulted in Judge Rosenberg censuring both counsel and ordering them to cease their personal attacks. Despite Judge Rosenberg's censure, Mr. Kozolchyk continued to attack opposing counsel in his court filings. Ultimately, the parties declared that a settlement had been reached at a settlement conference before Judge Brannon. After the conference, however, Mr. Kozolchyk took the position that there was no settlement agreement because defendant expressed its intention to appeal any fee award to Mr. Kozolchyk. Judge Rosenberg therefore ordered Mr. Kozolchyk to appear before Judge Brannon a second time. Judge Brannon concluded that Mr. Kozolchyk's position (that defendant waived its right to appeal fees) was without support and Judge Brannon also described Mr. Kozolchyk's behavior as vexatious.

III.

Our experiences with Mr. Kozolchyk do not seem to be unique or uncommon. To the contrary, there are several other cases in which the same or similar behavior is noted and rebuked. In *Nelson v. Kobi Karp Architecture & Interior Design, Inc.*, Case No. 17-23600-CIV-Seitz/McAliley, 2018 WL 3059980 (S.D. Fla. May 7, 2019), Judge Seitz denied a motion for attorney's fees "[b]ecause Plaintiff's counsel, Elliot Kozolchyk, unreasonably and unnecessarily dragged this case out in order to increase his fees." *Id.* at *1. Less than a month after initiating the case, Mr. Kozolchyk accepted checks on the plaintiff's behalf for the full amount of claimed unpaid wages and liquidated damages. *Id.* Mr. Kozolchyk refused, however, to accept an offer to settle the claims for attorney's fees and costs for \$2,000.00 and continued to litigate the case. *Id.*

⁵ Opposing counsel was required to do community service as well.

Mr. Kozolchyk eventually moved for \$9,065.00 in attorney's fees. *Id.* In denying that request, the court found that "Plaintiff's counsel's sole intent, after receiving the checks with the October 24, 2017 letter from defense counsel, was to run up his bill." *Id.* at *3.

Magistrate Judge Seltzer made a similar finding in a Report and Recommendation in *Batista v. South Florida Women's Health Association, Inc.*, Case No. 18-61075-CIV-Moreno/Seltzer, which was adopted by Judge Moreno. *Batista*, DE 37 & DE 40. The defendant in *Batista* had mailed a paycheck to the plaintiff, which she never received. *Batista*, DE 37 at 2. The plaintiff brought suit for those wages, whereupon the defendant emailed Mr. Kozolchyk informing him that the defendant had sent the plaintiff a check and would be willing to send her a new check for the amount of wages that she was owed. *Id.* at 2-3. However, Mr. Kozolchyk refused to settle the case without payment of his attorney's fees. As Judge Seltzer wrote, as of twelve days after the complaint was filed, "Plaintiff's counsel was aware that, at most, a mistake had occurred, which could easily be rectified. From that date forward, both Plaintiff's counsel and his client knew that Defendants were willing to issue a new check; the only obstacle to resolution throughout was the fee demand of Plaintiff's counsel." *Id.* at 5. Judge Seltzer recommended that the plaintiff's request for \$10,675 of attorney's fees be denied because "[t]his was a prototypical 'nuisance suit' for which an award of fees would be unreasonable and unjust." *Id.* at 1.

Nelson and *Batista* shared several features that contributed to Judge Seitz and Judge Seltzer's opinions that Mr. Kozolchyk was interested primarily in his attorney's fees. Both claims were for relatively small amounts—the plaintiff in *Nelson* claimed \$259.24 in total damages and the plaintiff in *Batista* claimed \$551.00 in total damages—and in both cases, Mr. Kozolchyk made no effort to resolve the dispute before filing a lawsuit. *Nelson*, 2018 WL 3059980 at *1; *Batista*, DE 37 at 2. In both cases, the defendants immediately communicated their desire to resolve the matter quickly and offered to pay Mr. Kozolchyk's clients for all the wages owed them. *Nelson*, 2018 WL 3059980 at *1; *Batista*, DE 37 at 3-4. And in both cases, Mr. Kozolchyk demanded around \$3,000.00 in attorney's fees to settle the matter and refused to settle for less. *Nelson*, 2018 WL 3059980 at *1; *Batista*, DE 37 at 4. In *Nelson*, Judge Seitz explained why Mr. Kozolchyk's \$3,000.00 demand was unreasonable:

[A]t [the time the offer was made], Plaintiff's counsel had billed all of 3.6 hours, which, at counsel's billing rate of \$350.00 an hour, totaled \$1,260.00 in fees. Even including the \$523.00 in costs incurred to that point, such a settlement offer was unreasonable and would have been a windfall for Plaintiff's counsel.

Nelson, 2018 WL 3059980, at *3.

Magistrate Judge Goodman recently found that these facts were echoed again in *Olguin v. Florida's Ultimate Heavy Hauling*, Case No. 17-61756-CIV-Cooke/Goodman, in which Judge

Goodman wrote a Report and Recommendation ("Report") recommending that the district judge deny Mr. Kozolchyk's client any attorney's fees.⁶ There, part of the plaintiff's claim was for unpaid minimum wages for his last week of work with defendant. Because the plaintiff had stopped working for defendants mid-week, defendants had cancelled his automatic payroll deposit and prepared a check for the wages owed him. The plaintiff never retrieved that paycheck, and neither the plaintiff nor Mr. Kozolchyk inquired into those wages before filing the lawsuit. Ultimately, Judge Goodman found that "Plaintiff's counsel, Elliot Kozolchyk, appeared to be far-more interested in generating attorney's fees for himself than in resolving a modest claim for his client's benefit. His actions strongly suggest a strategy of avoiding an early resolution in order to generate more fees." *Olguin*, DE 104 at 5.

Olguin also showcases two instances in which Mr. Kozolchyk appears to have made misrepresentations to the Court. The first instance concerns the defendants' attempt to tender to Mr. Kozolchyk a check for more than the total amount of unpaid minimum wages claimed by Mr. Kozolchyk's client. *Id.* at 10–11. The defendants averred that Mr. Kozolchyk declined to accept the tender without explanation. Mr. Kozolchyk argued that he never refused the tender, but that the tender was made by an unexpected delivery to Mr. Kozolchyk's office at a time when neither Mr. Kozolchyk nor anyone employed by him was present in the office; though there was a receptionist available when the delivery was made, the receptionist does not work for Mr. Kozolchyk and is not authorized to sign anything on Mr. Kozolchyk's behalf. According to Mr. Kozolchyk, because the receptionist would not sign for the package that contained the tender, the courier refused to deliver the package. Judge Goodman wrote that he "[was] not at all convinced by Kozolchyk's after-the-fact explanation that the receptionist was not authorized to accept a package for him." *Id.* at 32.

Second, Judge Goodman's Report details a hearing he held on the defendants' motion to bar solicitation of other plaintiffs. After the initiation of the lawsuit, another of defendants' former employees, Glenn Pryor ("Pryor"), received a phone call from a male attorney who attempted to solicit Pryor to join the lawsuit. Pryor testified that he recognized Mr. Kozolchyk's voice as that of the person who had solicited him to join the lawsuit, but Mr. Kozolchyk denied any knowledge of or involvement in the solicitous phone call. Although Judge Goodman did not make a finding or rule on the motion to bar solicitation, the Report indicates that he is skeptical of Mr. Kozolchyk's denial. Judge Goodman noted that Mr. Kozolchyk was the only male attorney involved in the case and that Mr. Kozolchyk "has a distinctive way of speaking, . . . [which] may well be atypical enough for someone like Pryor to recognize it ten months after his conversation with the person soliciting his legal business." *Id.* at 18. Judge Goodman also observed that at the time the solicitous phone call was made, Pryor was not affiliated in any way with the lawsuit, meaning that

⁶ Judge Goodman's Report and Recommendation has not yet been ruled on by the presiding district judge. The plaintiff submitted objections to Judge Goodman's Report on June 19, 2019. (*Olguin*, DE 105).

only a person with insider knowledge of defendants' former employees could have obtained Pryor's name and phone number. Judge Goodman was "hard-pressed to accept Kozolchyk's theory that some *other* FLSA attorney made a cold call to Pryor by scanning the public dockets on CM/ECF and learning of the lawsuit," noting instead that Mr. Kozolchyk's client might have known Pryor's cell phone number. *Id.* at 19–20.

In addition to the above orders illustrating Mr. Kozolchyk's conduct, magistrate judges in the District have reported to us similar experiences: Magistrate Judge Lurana S. Snow now recuses in all cases where Mr. Kozolchyk is counsel.

IV.

The episodes described above—both those we have personally experienced and those described in court orders by other judges in the District—reveal a pattern of behavior by Mr. Kozolchyk that we think violates several Rules of Professional Conduct. We believe that Mr. Kozolchyk's behavior shows that he litigates in the interest of his own fees rather than his client's best interest, which in turn leads to various acts of misconduct in an effort to obtain the greatest fee award possible.

First, Mr. Kozolchyk has repeatedly violated Rule 4-2.3 by delaying litigation in an effort to obtain increased attorney's fees. Rule 4-3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Fla. State Bar Rule 4-3.2. The Comment explains that "[r]ealizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client." *Id.* (emphasis added). In numerous instances described above, Mr. Kozolchyk has continued litigating cases after the defendant has offered or sent his client the full value of their claim. Despite the fact that his clients' claims have principally been settled, Mr. Kozolchyk then continues to generate unnecessary work for those cases so that he can later request attorney's fees for the additional time spent. In *Shuman*, for example, Mr. Kozolchyk's client was sent a payroll check for her claimed wages two weeks after the case was initiated; three months later, Mr. Kozolchyk filed an *unopposed* motion in limine. *Shuman*, DE 19. When Mr. Kozolchyk later defended the amount of attorney's fees he was paid pursuant to the parties' settlement, he frequently cited the motion in limine as evidence that he was entitled to the fees collected for work performed—regardless that the motion in limine was unnecessary because his client had already received her wages and the defendant agreed to the relief requested in the motion.

Second, Mr. Kozolchyk has violated Rule 4-3.3 and Rule 4-4.1 by making material misrepresentations to the Court and to his opposing counsel in an effort to avoid judicial scrutiny of settlement agreements. Rule 4-3.3 provides that lawyers have a duty of candor toward the tribunal. Fla. State Bar Rule 4-3.3. It requires that lawyers, as officers of the court, "avoid conduct

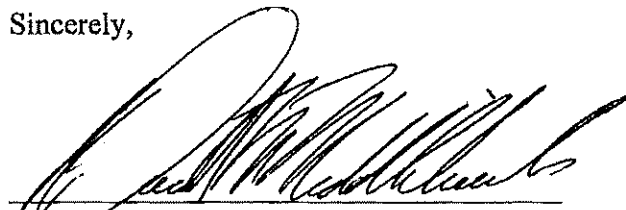
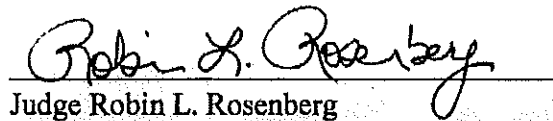
that undermines the integrity of the adjudicative process. *Id.*, Comment. In *Shuman*, however, Mr. Kozolchik presented the Court a self-serving and false account of the facts and circumstances of the case. In that case, Mr. Kozolchik repeatedly represented to the Court that the parties had not reached a settlement agreement that would require the Court's scrutiny. Such claim was false. It defied logic to label the exchange of money for the dismissal of a lawsuit as anything but a settlement agreement. And while "[a] lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force," Mr. Kozolchik's misrepresentations in *Shuman* were purely for his own benefit. His client had received payment for her claim months before he negotiated the settlement agreement at issue, and the disputed term was the amount of attorney's fees. His client's recovery was never at issue, and the false statements he made to the Court were purely self-serving.

Moreover, Mr. Kozolchik violated Rule 4-4.1 by misrepresenting the contents of Judge Dimitrouleas's standard FLSA order to his opposing counsel in order to secure a joint stipulation without dismissal, which Mr. Kozolchik represented would not require judicial review. Rule 4-4.1 prohibits lawyers from knowingly making false statements of material fact or law to non-clients. Fla. State Bar Rule 4-4.1. The Comment explains that "[m]isrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements." *Id.*, Comment. In describing Judge Dimitrouleas's order to his opposing counsel, Mr. Kozolchik omitted the order's explicit directive that dismissals without prejudice were subject to judicial review. It strains credulity to argue that Mr. Kozolchik merely misunderstood the clear directions in Judge Dimitrouleas's order, and it appears that these maneuvers were aimed at evading judicial scrutiny of the settlement agreement and his attorney's fees. Mr. Kozolchik's client was not benefitted in any way from these tactics, but Mr. Kozolchik was—after his opposing counsel filed a motion to enforce settlement agreement, Mr. Kozolchik allegedly demanded an additional \$1,000.00 for attorney's fees.

The idea that Mr. Kozolchik is willing to make misrepresentations to serve his self-interest is bolstered by the circumstances described by Judge Goodman in *Olguin*. In his Report, Judge Goodman notes his skepticism of several statements made by Mr. Kozolchik in the course of the litigation. While Judge Goodman's Report does not explicitly find Mr. Kozolchik's statements to be untrue, the Report's skepticism of those statements is striking. At the very least, it shows that Mr. Kozolchik is comporting himself in a manner that has led multiple judges to distrust his honesty and candor toward the court.

For all these reasons, we ask you to refer Mr. Kozolchik to the Committee for investigation, disciplinary action, and possible referral to the Florida Bar. We think that Mr. Kozolchik's tactics are of great concern and deserve additional scrutiny.

Sincerely,


Judge Donald M. Middlebrooks
Judge Robin L. Rosenberg

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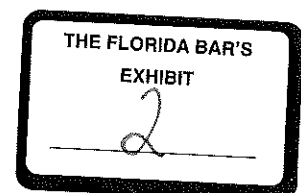
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 20-MC-21879

IN RE:

ELLIOT KOZOLCHYK
Florida Bar #74791

Transcript of the testimony of Elliot Kozolchyk before the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") by Zoom Video Conference commencing at 4:08 p.m. on Tuesday, June 28, 2022, reported by MARIA ISABEL SALUM, Registered Professional Reporter and Notary Public in and for the State of Florida.



Maria I. Salum, P.A.

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APPEARANCES

Committee Members:

William C. Hearon, Chair

Michael Olin

Da'Morus Cohen

Christopher Wahl

Richard Baron

Ryan Zagare

Devang Desai

Garth Yearick

Dylan Fay

Anita Viciano

Bertila Fernandez

Alison Smith

Andrew Figueroa

Val Rodriguez

Valencia Gallon-Stubbs

Bernardo Lopez

Bruce Lehr

Celeste Higgins

Tiffani Lee

Kimberly Gilmour (Recused from
consideration on this matter.)

WITNESS:

Elliot Kozolchyk

ALSO PRESENT:

Phoebe Daut

1 MR. HEARON: This is Bill Hearon.
2 First thing we're going to do is swear
3 you in. Our court reporter, Maribel,
4 will swear you in and then the committee
5 members will be given an opportunity to
6 question you after you are given an
7 opportunity to make an opening statement
8 if you so choose to do so. If you don't
9 want to make a statement, that's entirely
10 up to you. If you'd like to make one,
11 we're happy to listen to it and then the
12 questioning will begin when you are done.
13 And we have an order for the questioning
14 to be conducted, so that hopefully we
15 only have one person speaking to you at a
16 time.

17 If at any point, you don't catch the
18 question because of the audio, please ask
19 us to repeat it. We want to make sure
20 that you hear the question carefully
21 before you have an opportunity to answer.
22 Okay.

23 MR. KOZOLCHYK: Okay.

24 MR. HEARON: Obviously, if you need
25 to take a break for any reason, let us

1 know.

2 You had indicated to me that you
3 might want to bring someone along for
4 moral support. Is there anyone in the
5 room with you?

6 MR. KOZOLCHYK: Yes.

7 MR. HEARON: Who might that person
8 be?

9 MR. KOZOLCHYK: Her name is Phoebe
10 Dauz.

11 MR. HEARON: Can you spell the last
12 name?

13 MR. KOZOLCHYK: D-A-U-Z.

14 MR. HEARON: Is she an employee of
15 your firm?

16 MR. KOZOLCHYK: Yes.

17 MR. HEARON: Maribel, if you would
18 like to swear the witness.

19 THE REPORTER: Can you raise your
20 right hand, please?

21 Do you solemnly swear or affirm that
22 the testimony you're about to give will
23 be the truth, the whole truth and nothing
24 but the truth?

25 MR. KOZOLCHYK: Yes.

1 THE REPORTER: Thank you.

2 MR. HEARON: You have the floor, Mr.
3 Kozolchyk, if you would like to make a
4 statement.

5 MR. KOZOLCHYK: Yes, I would.

6 First I would like to thank the
7 entire committee for taking the time to
8 be here and ask me questions. I
9 particularly want to thank Mr. Cohen, Mr.
10 Wahl and Mr. Olin for yesterday taking
11 the time to ask me questions and get to
12 know me better.

13 Not a day has gone by during the
14 last three years that I have not thought
15 about this letter. I understand how
16 important and serious it is and that my
17 entire career and the ability to
18 financially support my two stepchildren,
19 Phoebe and Jeremy are at stake.

20 The time period during the events
21 described in the letter of referral was
22 an overwhelming, stressful and difficult
23 time for me. Since 2015, my fiancée was
24 battling cancer and receiving radiation
25 treatment. At the same time, I had an

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1 active caseload of 30 to 50 cases in
2 federal court at any given time. The
3 stress of my personal life and my
4 professional life was overwhelming.
5 Ultimately within the span of four months
6 in 2019, I lost my fiancée, five days
7 before our wedding, I receive this letter
8 of referral. I was sanctioned \$30,000 in
9 Olguin, and I was handling the very
10 difficult case of Soto Aldana. These
11 events are all described in detail in my
12 response letter.

13 The pandemic gave me much needed
14 time to digest the letter's content and
15 to reflect on my conduct, including what
16 I could have done differently and what I
17 could do better. Through intensive
18 self-reflection and regular counseling
19 with my attorney, David Rothman, I am not
20 the same person I was three to seven
21 years ago during the time that the events
22 described in the letter were unfolding.

23 Half the cases identified in the
24 letter of referral involve claims for
25 lost paychecks with low value. I no

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1 longer bring these claims in federal
2 court. On average, I decline about four
3 cases per month where prospective
4 clients' sole claims were that they were
5 not paid their last paychecks from their
6 employers. I have come to realize that
7 bringing these cases in federal court
8 hurts my credibility, which hurts me
9 professionally and hurts my other clients
10 whose claims are larger and depend on me
11 to represent them effectively.

12 Now when I am contacted by people
13 with low claims, I recommend they pursue
14 the matter in small claims court or
15 contact Florida Legal Aid or the
16 Department of Labor.

17 Some of the other cases identified
18 in the letter of referral deal with my
19 interactions with opposing counsels.
20 Cases involving unpaid wages are often
21 contentious. I no longer respond in-kind
22 when I feel that I have been attacked by
23 opposing counsel. I strive to take the
24 high road, avoid the emotion and focus
25 dispassionately on the issues relevant to

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1 the court's determination of each case.

2 I am not perfect. But who I am
3 today is much better than the person I
4 was at that time. I am more patient. I
5 am less reactive. I try hard to remain
6 calm even when confronted with difficult
7 situations and difficult opposing
8 counsels. I try to take the high road
9 and not react in-kind.

10 I am very proud of the work I do.
11 In February, March and April of this
12 year, I won three consecutive trials in
13 federal court. In one of those cases, I
14 represented eight people and the final
15 judgment was approximately \$268,000.

16 It is extremely important to my
17 family, my clients and me that I maintain
18 the ability to practice in federal court.
19 My practice is devoted almost exclusively
20 to the Federal Statute Fair Labor
21 Standards Act. I cannot maintain my
22 practice if I cannot practice in federal
23 court.

24 I have grown. I am still growing
25 and I continue to grow. Thank you again

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1 for your time.

2 MR. HEARON: Thank you.

3 Michael Olin, questions?

4 MR. OLIN: No. We spoke with Elliot
5 yesterday and had a very wholesome
6 conversation with the subcommittee, so I
7 would like to let anybody else that would
8 like to speak, including my
9 co-subcommittee members if they wish, to
10 go ahead and ask additional questions.

11 MR. HEARON: Da'Morus Cohen?

12 MR. COHEN: Sure. I will ask a few
13 questions.

14 Mr. Kozolchyk, it's nice to see you
15 again and I appreciate you taking the
16 time to meet with us yesterday
17 informally.

18 I just want to ask a few questions
19 related to your practice in the Southern
20 District, just so the committee has an
21 understanding of how expansive your
22 practice is and the importance of the
23 Southern District to your practice.

24 So currently, how many cases do you
25 have active in the Southern District?

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1 MR. KOZOLCHYK: I believe I have
2 approximately 20 currently. I have seven
3 more that I need to file. I'm going to
4 look it up right now to give an exact
5 number as to how many are currently open.

6 MR. COHEN: An estimate is fine.

7 Do you have an estimate of how many
8 cases you need to file?

9 MR. KOZOLCHYK: It could be -- could
10 be 30 cases. I'm getting new cases on a
11 regular basis.

12 MR. COHEN: Understood. What
13 percentage of your caseload is in the
14 Southern District of Florida?

15 MR. KOZOLCHYK: I have one case in
16 the Middle District currently.

17 MR. COHEN: So you have
18 approximately 20 plus cases active in the
19 Southern District and one case active in
20 the Middle District?

21 MR. KOZOLCHYK: And then I have a
22 small number of cases in the state court.

23 MR. COHEN: Understood.

24 All of your current cases -- strike
25 that.

1 You noted that you had changed your
2 policies and procedures relating to how
3 you file cases and what cases you take.
4 Are all of your current cases in the
5 Southern District, do they comport with
6 your policy and procedure of not taking
7 last check cases or a minimal threshold?

8 MR. KOZOLCHYK: Yes. I don't
9 believe I have any active cases currently
10 that have that kind of fact pattern.

11 MR. COHEN: Understood.

12 The events in the letter date back
13 from 2019, however, I want to know in the
14 last 12 to 18 months, have you had any
15 similar issues that are consistent with
16 the claims made by the judge in the
17 referral letter?

18 MR. KOZOLCHYK: The events occurred
19 between 2015 and 2019.

20 In the last 18 months, I had an
21 issue with opposing counsel in a case
22 where there was some conflict at a
23 deposition, but I maintained my composure
24 at all times. I did not attack opposing
25 counsel even one time, nor did I speak

1 over opposing counsel or interrupt him,
2 and I kept a calm and professional
3 demeanor. I believe the court with
4 regard to me took issue with the fact
5 that my objections were lengthy, and I
6 accept that, and I will be much more
7 succinct next time.

8 MR. COHEN: So it's your testimony
9 today that in the last 12 to 18 months,
10 you only had one similar issue when
11 compared to the claims made by the judge
12 in the response letter -- or the referral
13 letter, excuse me?

14 MR. KOZOLCHYK: Yes. There was that
15 other minor case we discussed. There was
16 a reference in the paperless order.
17 Just --

18 MR. COHEN: And when you say the
19 minor case, you're talking about the
20 motion for sanctions case that we
21 discussed where you filed the motion for
22 sanctions against your defense counsel?

23 MR. KOZOLCHYK: Right, right. In
24 both instances that I just referenced,
25 I'm the one that sought sanctions against

1 the other side. And I rarely file
2 motions for sanctions. I don't believe I
3 have filed a motion for sanctions in the
4 last three years, except those two cases,
5 to the best of my recollection. It's not
6 something that I do regularly. But the
7 conflict before the court was initiated
8 by me because of what I saw was going on.

9 MR. COHEN: Understood.

10 I think that's all I have in
11 relation to your current caseload and any
12 other similar issues that you've had in
13 the last 12 to 18 months.

14 The last couple of questions I will
15 ask is you mentioned you had two
16 stepchildren, correct?

17 MR. KOZOLCHYK: Yes.

18 MR. COHEN: And what are their names
19 and ages?

20 MR. KOZOLCHYK: Jeremy is 18 and
21 Phoebe is 20.

22 MR. COHEN: And Phoebe also works at
23 your firm, correct?

24 MR. KOZOLCHYK: Correct. She's the
25 firm manager.

1 MR. COHEN: Okay, perfect. And I
2 think that's all I have. I'll let Chris
3 jump in to see if he has any questions.

4 MR. HEARON: Mr. Wahl?

5 MR. WAHL: Thank you.

6 Mr. Kozolchyk, I have just one
7 question right now. You mentioned that
8 you basically have a threshold criterion
9 for what sort of cases you're going to
10 take in terms of how much money the
11 plaintiff is owed or allegedly owed. Why
12 are you no longer taking those cases?
13 Can you please just give us the reason
14 why there are certain cases you are not
15 going to be filing any more?

16 MR. KOZOLCHYK: When -- a lot of
17 clients contact me for unpaid wages and
18 in particular their employer has not paid
19 them their last paycheck. That could be
20 a week or two of work or it can be a few
21 days. And I empathize with my clients
22 because of how uneven the bargaining
23 power is between the employer and the
24 employee, where the employee can often
25 feel powerless with regard to collecting

1 their last paycheck if the employer
2 doesn't want to pay. But I don't bring
3 those cases any more because it hurts my
4 credibility, when ultimately I can't take
5 it pro bono and when my fees exceed the
6 small value of the claim, it's easy to
7 interpret that as the whole case being
8 about my attorney's fees, and that hurts
9 my credibility, which then hurts my other
10 clients with much larger claims because
11 my credibility is being hurt in front of
12 the court. It's not -- it's a disservice
13 to me and my other clients and to me
14 professionally to continue to bring those
15 kind of cases. It's also been
16 unproductive for me professionally. I
17 think it's in large part why I'm here
18 today and so I've opted not to take those
19 cases and I regularly reject those cases.
20 I decline them.

21 MR. WAHL: Thanks for sharing that.
22 I completely respect your decision and
23 you making the right judgment call to
24 stay out of trouble and maybe drawing a
25 bright line rule.

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1 I'm just curious if congress created
2 a statute that allows for these cases to
3 be brought and congress has created a
4 situation where an employee can get 600
5 bucks and an attorney can get \$6,000
6 based on the way a case is litigated, why
7 does that harm your credibility if you're
8 just following the statute? Have people
9 come towards you and said you shouldn't
10 be filing these cases? I mean, I'm just
11 concerned that there are people with
12 claims out there and they may not get
13 their day in court because -- I'm just
14 wondering where these credibility
15 concerns come from and alternatively, is
16 the federal court the best forum to be
17 bringing those cases or is there a
18 perhaps more efficient forum? You said
19 small claims court. Were you helping
20 these people before and now they're not
21 being helped or are they still being
22 helped in a different way?

23 MR. KOZOLCHYK: They can bring the
24 cases themselves in small claims court.
25 I refer them there or I say you can also

1 contact Legal Aid or the Department of
2 Labor. It's not practical for me to
3 personally pursue those cases in small
4 claims court while simultaneously trying
5 to litigate the cases in my federal
6 practice, plus the defendants always have
7 the option, if it's the Federal Statute
8 of Fair Labor Standards Act, to remove
9 the case to federal court anyway.

10 MR. WAHL: That's all I have.

11 MR. HEARON: Mr. Baron?

12 MR. BARON: Thank you, Mr. Chairman.

13 Mr. Kozolchyk, did I pronounce that
14 right, sir?

15 MR. KOZOLCHYK: Yes. If you prefer,
16 you can call me Elliot, too.

17 MR. BARON: Mr. Kozolchyk, during
18 that period of your reflection, were you
19 getting any counseling from a
20 professional?

21 MR. KOZOLCHYK: Not from a
22 professional. Lots of counseling from
23 Mr. Rothman. I am very open to getting
24 counseling.

25 MR. BARON: How come you haven't so

1 far? It sounds like you were in a really
2 tough place where counseling could have
3 been extraordinarily helpful. I'm
4 wondering why you didn't undertake that
5 endeavor.

6 MR. KOZOLCHYK: When you say
7 "counseling," do you mean like
8 personally, like a therapist or
9 professionally like professional
10 counseling?

11 MR. BARON: Like a therapist.

12 MR. KOZOLCHYK: I mean, I know
13 Mr. Rothman and I discussed counseling.
14 I was under the impression that he
15 mentioned in some professional capacity
16 related to a Florida legal organization,
17 so I didn't consider that personal
18 counseling though I'm not sure if it
19 would be considered personal counseling.
20 So assuming that that's distinct, actual
21 therapist, I have not -- I really haven't
22 thought a lot about a personal therapist.
23 I am certainly open to that, too. I can
24 tell you it's been very difficult these
25 several years. I haven't given that a

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1 lot of thought.

2 MR. BARON: Have you ever heard of
3 FLA, Florida Lawyers Assistance program?

4 MR. KOZOLCHYK: That was the
5 organization that I was trying to
6 reference. Mr. Rothman and I did discuss
7 that. If that is personal counseling,
8 yeah. Mr. Rothman and I have discussed
9 that. It hasn't been pursued yet, but
10 I'm very open to doing that.

11 MR. BARON: You said you have about
12 20 FLSA cases in the Federal Southern
13 District now, more or less,
14 approximately?

15 MR. KOZOLCHYK: Currently active. I
16 have more that need to be filed.

17 MR. BARON: But currently you have
18 20 active? I'm not trying to pin you
19 down to a number. I'm just trying to get
20 a concept.

21 You have about 20 cases; is that
22 right?

23 MR. KOZOLCHYK: Right.

24 MR. BARON: Can you tell me what the
25 average wage claim is in those cases?

1 MR. KOZOLCHYK: Oh, I mean, it can
2 vary from -- I haven't run an actual
3 mathematical average. I have some cases
4 that could be five, six, seven, 8,000. I
5 have this case that I went to trial in
6 February, I represented eight people.

7 MR. BARON: How many?

8 MR. KOZOLCHYK: Eight people. And
9 the final judgment was for 268,000.

10 MR. BARON: So that was a multiple
11 plaintiff case?

12 MR. KOZOLCHYK: Yes. One gentleman
13 is receiving \$92,000 on that. Another
14 gentleman I think is receiving in the
15 70s.

16 MR. BARON: And that is because in
17 the judgment they get trebled the amount
18 of their lost wages, correct?

19 MR. KOZOLCHYK: They get double --
20 if the Court awards liquidated damages,
21 then they're entitled to double damages.

22 MR. BARON: Where do you get your
23 clients from?

24 MR. KOZOLCHYK: Internet. Mostly
25 Internet, but I also -- I get referrals

1 from other happy clients. I get
2 referrals from other attorneys. I've
3 gotten referrals from opposing counsels.

4 MR. BARON: Would you say most of
5 your clients come from advertising on the
6 Internet?

7 MR. KOZOLCHYK: The majority, yes.

8 MR. BARON: What does your ad say?

9 MR. KOZOLCHYK: I'm not hands-on on
10 the marketing, so I don't write it myself
11 and I don't look at it that much, to be
12 honest with you, but I believe it's --
13 and it says various things, depending on
14 what ad is posted. I think there's
15 something like "help recover the lost
16 wages. Help recover your overtime,"
17 things like that.

18 MR. BARON: Do you have someone that
19 does your marketing for you?

20 MR. KOZOLCHYK: I did. And I'm in a
21 state of transition now.

22 MR. BARON: What does that mean?

23 MR. KOZOLCHYK: I had a long time
24 person doing marketing and he has moved
25 into other spaces and doesn't do this

1 marketing very much anymore. He's kept
2 me on because I've been such a long time
3 client of his, but it was -- we have a
4 very good relationship, but I need to
5 move on to a different marketer.

6 MR. BARON: Will you continue
7 marketing your ability to help people
8 recover their lost claim wages, correct?

9 MR. KOZOLCHYK: Yes.

10 MR. BARON: If I were to Google
11 "lost claims," does your name pop up, is
12 that the way it works, "lost wages"?

13 MR. KOZOLCHYK: My name could pop up
14 along with several other attorneys.

15 MR. BARON: Is that something you
16 pay for to get your name to pop up early?

17 MR. KOZOLCHYK: Yes.

18 MR. BARON: Thank you very much, Mr.
19 Chairman. I have nothing further.

20 MR. HEARON: Thank you, Mr. Baron.
21 Ryan?

22 MR. ZAGARE: No, I don't have
23 anything.

24 MR. HEARON: Davang?

25 MR. DESAI: Thank you, Mr. Chair.

1 Good afternoon, Mr. Kozolchyk. How
2 are you?

3 MR. KOZOLCHYK: Good. How are you?

4 MR. DESAI: Good, sir. Condolences
5 on behalf of the committee for your loss.

6 As it relates to your response, you
7 indicated in your last paragraph that it
8 was in 2020, when you traveled to
9 Tallahassee to attend a Practicing With
10 Professionalism CLE. Do you recall that?

11 MR. KOZOLCHYK: Yes.

12 MR. DESAI: You've been licensed to
13 practice since 2009; is that correct?

14 MR. KOZOLCHYK: Yes.

15 MR. DESAI: Given some of the issues
16 that you have experienced with the
17 judiciary and your lack of candor and
18 professionalism with your colleagues at
19 the bar, as indicated in the court's
20 referral, why is it that it has taken you
21 since your graduation until 2020 to
22 attend some type of practicing or
23 professionalism course, and if you've
24 attended others, what have you attended
25 and when?

1 MR. KOZOLCHYK: I believe there may
2 have been a mandatory Practicing With
3 Professionalism or some professional CLE
4 early on in my career.

5 Regarding what you said in your
6 question about my lack of candor to the
7 court and to opposing counsels, I address
8 those issues explicitly in my response
9 letter, and if you want me to go in more
10 detail about those items, I can. I
11 respectfully don't believe that I was not
12 candid with the court. I would never not
13 be candid with the court, and those
14 specific allegations, if you'd like to
15 address them, I'm very prepared to do so
16 as my letter does.

17 MR. DESAI: I appreciate that, and
18 we received a copy of your response, we
19 understand your positions, so thank you.

20 Those are all my questions.

21 MR. HEARON: Okay. Garth?

22 MR. YEARICK: Thank you,
23 Mr. Chairman.

24 Mr. Kozolchyk, pleasure to see you.

25 I have some questions. Can you hear

1 me okay?

2 MR. KOZOLCHYK: Yes, I can.

3 MR. YEARICK: You understand one of
4 the concerns that was raised in the
5 referral letter was that it appeared to
6 be that you were doing this litigation
7 and participating in this litigation for
8 your own benefit above that of your
9 clients. Is that a fair summary of some
10 of the assertions made?

11 MR. KOZOLCHYK: In the letter of
12 referral, yes.

13 MR. YEARICK: Do you believe that
14 that was true?

15 MR. KOZOLCHYK: I don't believe that
16 was true.

17 MR. YEARICK: And sir, one of the
18 things that you said throughout today and
19 throughout your response is that you've
20 decided not to take certain cases that
21 you would otherwise take because of the
22 amount; is that right?

23 MR. KOZOLCHYK: Yes.

24 MR. YEARICK: And the amount -- and
25 my understanding is you referred to it,

1 and I think some other folks have
2 referred to it, as last paycheck cases,
3 right?

4 MR. KOZOLCHYK: Yes.

5 MR. YEARICK: Is there an amount
6 that you associate with the last paycheck
7 case and that's the reason you don't take
8 it?

9 MR. KOZOLCHYK: They are typically
10 under a thousand dollars. That's not to
11 say I would file a case for a thousand
12 one dollars. I'm not making that
13 assertion. I haven't really put a
14 specific dollar amount, what's the bright
15 line rule for when I would reject a case.
16 But certainly under a thousand dollars is
17 clear as day. I'm not particularly
18 comfortable even in the thousands. I
19 haven't really put an exact number on
20 what the line is, but I think all of my
21 cases in federal court right now are over
22 \$5,000 or close to it, and many are --
23 I'm sorry, many are much, much higher
24 than that.

25 MR. YEARICK: I understand that.

1 And I'm wondering -- the reason why I'm
2 asking the question is, I'm trying to
3 determine why you drew the line where you
4 did?

5 MR. KOZOLCHYK: Where I drew the
6 line currently?

7 MR. YEARICK: Yes.

8 MR. KOZOLCHYK: I mean, I don't have
9 a bright line right now, but I'm not
10 comfortable bringing the smaller cases
11 because the attorney's fees it takes to
12 bring those cases immediately exceeds the
13 value of the recovery, and if a defendant
14 takes a position they're going to pay the
15 client but not pay me, it puts me in a
16 position -- it puts me in a difficult
17 position that can appear to the judge
18 that I'm just litigating for my
19 attorney's fees.

20 MR. YEARICK: And that's why you
21 think it affects your credibility in
22 front of the court?

23 MR. KOZOLCHYK: Yes.

24 MR. YEARICK: Now, has it been
25 expressed to you by judges and orders or

1 otherwise that one thing that you could
2 do to potentially participate in those
3 cases is increase efficiencies or not
4 charge as much for certain tasks that you
5 have done over and over in these cases?

6 MR. KOZOLCHYK: I'm sorry, could you
7 repeat that question, please?

8 MR. YEARICK: Is one of the
9 things -- if you wanted to still keep
10 participating in cases that were under
11 say \$10,000 or even around that amount,
12 couldn't you increase efficiencies in
13 your practice by creating forms or
14 otherwise that would allow you to maybe
15 not bill as much for a particular task
16 that you've done over and over in other
17 cases?

18 MR. KOZOLCHYK: I mean, I do have
19 forms. If you're referring to
20 complaints, I have a form for complaints.
21 But often I think there is still a
22 complexity in a complaint that I don't
23 always fully realize. Different cases
24 have different issues that I have to put
25 in certain legal theories and then if

1 there's multiple plaintiffs and multiple
2 defendants and tying the defendants
3 together, you can have two complaints
4 that look similar, but have some nuance
5 distinction as to certain legal theories
6 and that all has to be sifted through.
7 Particularly when, you know, the case
8 that I went to trial in February with
9 eight plaintiffs, that case started with
10 12 people and it actually went up to 13
11 at one point. Getting a complaint like
12 that together was very complicated. I'm
13 as efficient as I can be and I do use
14 forms and templates.

15 MR. YEARICK: Has it ever occurred,
16 particularly the last three or four
17 years, where judges have brought concerns
18 on ruling on your attorney's fees, that
19 perhaps you could have been more
20 efficient or not charged as much and not
21 add it to the value of the case with your
22 fees?

23 MR. KOZOLCHYK: Some of my fee
24 motions have been discounted due to that.

25 MR. YEARICK: And is it your

1 testimony that you understand that to be
2 a credibility issue with the court or is
3 the court just concerned that these cases
4 are being protracted by attorney's fees?

5 MR. KOZOLCHYK: I feel like there's
6 a lot of issues being put there in one
7 question. When I take a case to trial or
8 when we settle a case and I have to then
9 file a motion for attorney's fees, the
10 other side always attacks line by line
11 every item, those are litigated and
12 ultimately the judge decides. It's not
13 uncommon for a judge to discount
14 attorney's fees 10, 20, 30 percent and
15 that's not just for me, but that's for
16 other practitioners. Rarely does an
17 attorney ever get a hundred percent of
18 attorney's fees they seek.

19 Although I can point to a case that
20 I litigated where that was the case and
21 the other side was protracting the
22 attorney's litigation tremendously. But
23 the norm is that oftentimes the
24 attorney's fees are discounted 10, 20 or
25 30 percent. I acknowledge some of those

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1 decisions include with regard to me that
2 some things could have been done more
3 efficiently, I having been there and
4 actually done the work. It is my opinion
5 that there's a misunderstanding as to a
6 form complaint. The other side often
7 says, "Oh, it's a form complaint, it
8 should take you a few minutes." It
9 doesn't take me a few minutes to do a
10 complaint, particularly when certain
11 cases have more issues than others, more
12 parties than others and tying it all
13 together, it can take me 40, 50, 60
14 minutes sometimes to prepare a complaint.
15 So I understand sometimes the courts
16 don't award me a hundred percent if I
17 bill an hour or 50 minutes to prepare a
18 complaint. Even if it took me that
19 amount of time, I understand the courts
20 don't always grant 100 percent of that
21 fee. But I find that to be very common.
22 It's rare to see a court grant a hundred
23 percent of attorney's fees, in my
24 experience, and from what I've seen from
25 other practitioners.

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1 I'm trying to answer your questions
2 as directly as I can.

3 MR. YEARICK: I guess I'll ask it in
4 a different way. When you're settling
5 cases, including cases for larger amounts
6 that you discussed, do you weigh the
7 benefit your client gets from the case as
8 opposed to the amount of fees that you
9 may have to write off to make that
10 settlement or how do you balance those
11 interests in your mind?

12 MR. KOZOLCHYK: Well, if we can't
13 reach an agreement on a global amount, I
14 will settle my client's claim and let the
15 court determine attorney's fees. In
16 fact, many of the cases in this letter of
17 referral, I have made settlement offers
18 that allow the court to determine my
19 attorney's fees, particularly the Soto
20 Aldana case, every single one of my
21 offers said, "Let the court determine
22 attorney's fees. I agree to confer with
23 you in good faith to try and resolve the
24 attorney's fee. If you can't agree to
25 it, we can let the court determine it."

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1 So I don't -- I try very hard not to
2 allow my attorney's fees to be the
3 stumbling block in the cases, and the way
4 I do that is by including the option to
5 let the court determine the attorney's
6 fees.

7 MR. YEARICK: And do you have a copy
8 of your personal statement in front of
9 you?

10 MR. KOZOLCHYK: Yes.

11 MR. YEARICK: I wanted to direct
12 your attention, a couple of questions
13 about a paragraph on page 13. And this
14 is discussing Judge Brannon's R&R
15 relating to the settlement motion that
16 you made and you stated here that "Judge
17 Brannon's R&R did not conclude that my
18 argument that the defendants waived their
19 right to appeal liquidated damages, fees
20 and costs was," quote "without support."

21 You see that?

22 MR. KOZOLCHYK: Yes.

23 MR. YEARICK: And the "without
24 support" you're quoting there is from
25 Judge Rosenberg's and Judge Middlebrooks'

1 referral letter, right?

2 MR. KOZOLCHYK: Yes.

3 MR. YEARICK: And so, you disagree
4 with that statement in the referral
5 letter?

6 MR. KOZOLCHYK: I quote literally
7 what Judge Brannon's R&R said explicitly
8 after that.

9 MR. YEARICK: Right. And what you
10 quote is that "R&R concluded," quote,
11 "plaintiff's counsel's interpretation
12 that a full settlement was reached, which
13 cannot be appealed, is inaccurate;" is
14 that correct?

15 MR. KOZOLCHYK: Yes. And I accept
16 that I was wrong in that issue. I did
17 legal research and I cited the legal
18 research I did in my filing. The court
19 disagreed and I accept that.

20 MR. YEARICK: Do you see -- are you
21 distinguishing between the judge's
22 referral letter saying it was without
23 support and Judge Brannon saying it was
24 inaccurate? Do you see those two
25 different things?

1 MR. KOZOLCHYK: Yes.

2 MR. YEARICK: And why?

3 MR. KOZOLCHYK: Because I did legal
4 research and I found authority that I
5 believed did support my position, so I
6 don't believe it was without support. I
7 cited authority in my filing, but I
8 accept that I was wrong on that issue. I
9 accept the judge's conclusion contrary to
10 what I advocated for, and I'm not
11 challenging that. I'm not continuing to
12 assert I was right notwithstanding the
13 judge's conclusion to the contrary. I
14 accept the judge's conclusion.

15 MR. YEARICK: You're still
16 correlating with the language of Judge
17 Rosenberg and Judge Middlebrooks'
18 referral letter, right, you're saying
19 that they said it was without support and
20 you disagree with that, right?

21 MR. KOZOLCHYK: I do, because I did
22 legal research and I cited to what I
23 believe supported that.

24 MR. YEARICK: The very next sentence
25 of what Judge Brannon said and the court

1 that you blocked above that is, "This was
2 not a term of the partial settlement
3 agreement reached."

4 You see that?

5 MR. KOZOLCHYK: Right.

6 MR. YEARICK: So Judge Brannon's
7 report and recommendation was saying it
8 was without support because that wasn't
9 part of the partial settlement agreement
10 reached, right?

11 MR. KOZOLCHYK: I believed the way
12 the terms of the settlement were -- if I
13 could take a step back and give some
14 context to this, if I may.

15 MR. YEARICK: Uh-huh.

16 MR. KOZOLCHYK: First, this case,
17 the Salvador case was litigated for a
18 very long time. It was litigated past
19 summary judgment before it finally
20 settled. We won on summary judgment on
21 an issue that Judge Rosenberg said was
22 not even a close call. Then we reached a
23 settlement. The terms of the settlement
24 included that issue of liquidated damages
25 would still have to be litigated in front

1 of the court, so it wouldn't be settled
2 and my attorney's fees and costs would
3 still have to be litigated in front of
4 the court. It wouldn't be settled. And
5 plaintiff accepted that. And I
6 recommended that the plaintiff accept
7 that. So these were the only terms that
8 the defense would agree to settle the
9 case, and we took it so we could finally
10 get the case settled.

11 After the settlement was reached,
12 one of the things the defendant tried to
13 do was compel confidentiality, which the
14 court prohibits and it was never agreed
15 to as a term of the settlement. I moved
16 to enforce settlement, to ensure the case
17 would get settled and I further advocated
18 that there was not a right to appeal on
19 attorney's fees because the parties
20 specifically agreed to let the court
21 determine it and I wanted to put this
22 case to an end. I didn't want the
23 litigation to keep going even on to
24 appeal. I didn't want litigations on
25 appeal. I wanted this case over. So I

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1 did legal research and I found what I
2 believed supported that position that
3 where you consent to the court
4 determining it, you don't have the
5 ability to appeal. And that was
6 favorable to my side because we wanted
7 the litigation over with. We wanted the
8 litigation over with a long time ago. So
9 I included that legal research in my
10 filing to support the position that they
11 didn't have the right to appeal.

12 The judge disagreed with that. I
13 accept that the judge -- I accept the
14 judge's finding that that was wrong and
15 I'm not challenging that, but I didn't
16 just make that assertion without doing
17 legal research.

18 MR. YEARICK: What I'm focused on
19 and what I'm trying to understand is that
20 even in your response letter, you said
21 you are challenging the referral letter,
22 and you're saying Judge Brannon did not
23 say that it was met without support, and
24 you put that in quotes, but then when I
25 go back to the referral letter and I go

1 back to the letter, the R&R, Judge
2 Brannon's R&R, he's saying it was without
3 support because it was not part of the
4 settlement agreement that was reached.
5 Isn't he?

6 MR. KOZOLCHYK: I don't -- did he
7 specifically -- he agrees it's not part
8 of the settlement that's reached. I
9 thought it was from the legal research I
10 did. I'm wrong with my legal research.
11 I'm not challenging.

12 MR. YEARICK: I'm not trying to go
13 back and revisit history of what was
14 argued in front of Judge Brannon. What
15 I'm trying to do is understand why you're
16 still correlating with the language used
17 by Judge Rosenberg and Judge Middlebrooks
18 saying it was or was without support.
19 You're saying "I did the research."
20 Judge Brannon's language said that was
21 not a part of the settlement -- partial
22 settlement agreement reached. Are you
23 still sitting here today saying, "No,
24 Judge Middlebrooks and Judge Rosenberg
25 were wrong, he didn't say it was without

1 support, just because he didn't use those
2 exact two words"? I just don't
3 understand your argument.

4 MR. KOZOLCHYK: I believed that the
5 terms of the settlement waived the right
6 to appeal based on the legal research I
7 did, so I believed that argument was with
8 support. My intention behind making that
9 argument was to put the case to an end,
10 to stop potential future litigation.

11 MR. YEARICK: But what is being
12 talked about in this paragraph is your
13 response, and I'm sorry to keep focusing
14 in so much on this. It's "Judge
15 Brannon's R&R did not conclude that my
16 argument..." it's not talking about what
17 you argued back then. It's what Judge
18 Brannon put in his R&R, which we can read
19 in the paragraph above in your statement.
20 What's your basis for saying that Judge
21 Rosenberg and Judge Middlebrooks were
22 wrong when they said "without support"?

23 MR. KOZOLCHYK: That I did legal
24 research. I'm not trying to go in
25 circles here. I'm trying --

1 MR. YEARICK: No, I think I
2 understand your point.

3 MR. KOZOLCHYK: Just to be clear, I
4 acknowledge I'm wrong. I accept -- I'm
5 not challenging the decision at all and
6 in good faith and for good reasons I made
7 the argument and I believed in the
8 argument. And ultimately the judge
9 granted my motion to enforce settlement
10 in part and he said in the report and
11 recommendation, "Plaintiff's description
12 of the terms of the settlement agreement
13 in paragraph four of the motion is
14 correct," and then he added additional
15 terms and I agreed everything I sought to
16 enforce was not granted a hundred
17 percent, and I accept I was wrong and
18 that my legal research was not correct,
19 but I would not file and ask for a relief
20 for something without support, and I
21 believe the legal research I found
22 supported that, and I accept the judge's
23 decision in the contrary.

24 MR. YEARICK: And sir, I want to go
25 back to something we started off with.

1 It's your position here today that since
2 2019, when this letter was sent to you
3 and you received it, you tried to change
4 your ways, right?

5 MR. KOZOLCHYK: Very much, and I'm
6 not perfect and every day I'm growing and
7 getting better.

8 MR. YEARICK: And other than -- I
9 think in your testimony before, you were
10 referring to Judge Strauss's order in the
11 Road Runner Moving and Storage case where
12 he basically said that there was a
13 dispute, deposition disputes that
14 resulted in some heated discussions and
15 that at the end of the day, you were
16 warned that if it continued in that
17 case -- and this is in 2021, right -- if
18 you continued and your opposing counsel
19 continued in that kind of conduct that it
20 would be referred to this committee,
21 wouldn't it?

22 MR. KOZOLCHYK: Yes, and if I may
23 speak a little bit more about that
24 because it may be a little unclear.

25 At no point in that exchange at the

1 deposition did I raise my voice. At no
2 point did I interrupt opposing counsel.
3 I did not interrupt him. I did not talk
4 over him. I never attacked him. You
5 will not find in the order -- if you look
6 at the substance of Judge Strauss's order
7 as it pertains to my conduct, because
8 opposing counsel's conduct is different
9 than mine. In my conduct, the sole issue
10 was that my objections were longer than
11 they should have been, and I accept that
12 and I will be more succinct in the
13 future. But I personally in that
14 exchange was not yelling. I personally
15 was not talking over the other side. I
16 was not attacking opposing counsel.
17 Every time he interrupted me, I stopped
18 and waited for him to finish before I
19 continued. I maintained my composure and
20 my volume at an appropriate level at all
21 times. And I had this letter of referral
22 in the back of my mind the entire time.
23 It was in the back of my mind the entire
24 time because I wanted to grow from this
25 experience and I didn't want this event

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1 to cause me problems, so as for my
2 behavior there, I could say firmly -- and
3 we have audio recordings, by the way of
4 much of this, and I can provide you with
5 those audio recordings if you would like
6 to hear what transpired at those events.
7 I have the audio recordings.

8 The conduct that was specific to me,
9 the actual substantive conduct was that
10 my objections, which were calm and
11 professional and substantive went on
12 longer than they should and I completely
13 accept that I'm going to work to be more
14 succinct in my objections. I'm not
15 trying to blame opposing counsel who's
16 not here today. They would have been
17 shorter had he allowed me to make them
18 fully without interrupting me. I accept
19 the judge's criticism that they were too
20 long and I will work to be more succinct
21 in the future in my objections.

22 MR. YEARICK: Do you recognize that
23 Judge Strauss's order said, quote, "The
24 back and forth squabble between Mr.
25 Kozolchyk and Mr. Amit then ensued,

1 including silly arguments about who had
2 argued with whom"? Does that sound about
3 right?

4 MR. KOZOLCHYK: He said those
5 things. I have the audio recordings of
6 what actually happened at the deposition.
7 I'm not saying he's wrong or anything.
8 I'm saying the actual substantive conduct
9 that I engaged in that was at issue was
10 that my objections went longer than they
11 should have. And if you listen to the
12 audio recordings, I stayed in the exact
13 same tone I'm talking to you right now
14 the entire time while he was yelling at
15 me and yelling profanities at me. I went
16 out of my way to make sure I was not
17 going to talk over him. I was not going
18 to engage him. And every time he
19 interrupted me, I stopped. And I had
20 this hearing going on in the back of my
21 mind the entire time. I was not going to
22 allow myself to do what opposing counsel
23 was doing. I was not going to
24 reciprocate. I actually find that event
25 as an example because I didn't engage

1 opposing counsel. I did not engage
2 opposing counsel, to be very, very clear.
3 I was not engaging him in an argument. I
4 stayed calm the entire time. Ultimately
5 that became an issue in front of the
6 court because I am the one that moved for
7 sanctions against the other side. He
8 yelled -- he was, among other things, he
9 was yelling profanities at me during the
10 deposition.

11 And I've litigated against this
12 opposing counsel in many other cases, but
13 I'm the one that sought sanctions against
14 the other side in that case.

15 MR. YEARICK: I don't have any
16 further questions.

17 MR. KOZOLCHYK: Thank you.

18 MR. HEARON: Thank you.

19 Dylan?

20 MR. FAY: Thank you.

21 Mr. Kozolchyk, thank you for being
22 here. I have just a couple of questions.

23 My first question is, what is your
24 hourly rate?

25 MR. KOZOLCHYK: It's been -- the

1 courts have awarded primarily 375. There
2 was one or two occasions when I've been
3 awarded 400. I'm seeking a rate of 450
4 right now that has not been awarded by
5 the court.

6 MR. FAY: If you say that you did
7 take a case that was a last paycheck case
8 today, a case where, say, \$400, how long
9 do you think it would take you to put a
10 complaint together?

11 MR. KOZOLCHYK: I don't take those
12 kind of cases anymore.

13 MR. FAY: I know you don't take
14 them, but imagine that you were able to
15 take one, as I think CJ says, the statute
16 does say you can bring these cases, so if
17 you did have one of these cases like you
18 did in the past, how long do you think it
19 would take you to put the complaint
20 together?

21 MR. KOZOLCHYK: Well, at first, I
22 would have to do the interview and, you
23 know, the interview depending on how
24 complex the case is. Even a seemingly
25 straightforward case can present issues

1 such as finding out -- sometimes it can
2 be very difficult to find the defendant,
3 the name of the entity. Sometimes the
4 individuals are difficult to locate and
5 identify. Sometimes there's multiple
6 individuals, multiple defendants, the
7 interrelation between these defendants,
8 the day ranges my clients worked, the
9 hours worked, the schedule, what his
10 method of payment was, so many different
11 kinds of payments, you know, hourly,
12 commission, bonus. Some defendants paid
13 some clients and it's like random, the
14 methodology that they employed, and to
15 try to decipher and interpret their
16 method they chose to pay and to put it --
17 make it fit into the FLSA could be a
18 challenging task. Sometimes the
19 exemptions where a plaintiff may not be
20 entitled to minimum wage overtime.
21 Sometimes there's issues of coverage
22 where an employer may not be subject to
23 the statute and there could be other
24 issues as well beyond that. So even if
25 someone is owed a last paycheck, there

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1 could be other issues and sometimes
2 clients are owed last paychecks, but it
3 turns out they're owed \$30,000 in
4 overtime, that even the client didn't
5 even know about, and the reason of "how
6 could that be" is because if they're not
7 exempt from overtime and the employer
8 thought they were exempt -- and the
9 employer thought they were exempt, and
10 the employee even thought they were
11 exempt, through the interview, it comes
12 out actually they're not exempt and this
13 entire time they are owed much more money
14 than they realized, that could happen,
15 too. And I have no idea of knowing that
16 until I do the interview. So it's
17 very -- if someone comes to my office and
18 they are owed a hundred bucks or 200
19 bucks, whatever it is, but you have to
20 cover all the issues to see what else is
21 out there and to know who to sue
22 correctly and how to put the legal
23 theories together to establish coverage
24 and make sure they are not exempt, that
25 we're naming the right parties, that they

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1 don't have any other claims out there,
2 that even a seemingly simple -- what we
3 thought was a simple straightforward case
4 actually requires a lot of analysis. So
5 the interview itself can often take two
6 hours.

7 And then drafting the complaint. I
8 mean, if it's a real simple complaint, it
9 might not take me more than 20 or 30
10 minutes, but it sure can take longer if a
11 bunch of issues creep into it.

12 I've got a case right now where I
13 have the, what is essentially a home
14 health aide, but he's not working at
15 home, he's working at an assisted living
16 facility, and there's a question of
17 trying to get him covered under the
18 statute, and who his real employer is, is
19 he jointly employed by the facility and
20 by the patient's family members at the
21 same time. It's a whole host of issues
22 that one may not realize.

23 MR. FAY: I guess what I'm hearing
24 is even for the simplest of cases, it
25 could take five or ten hours before the

1 defendant is on notice and a complaint
2 has been filed and everything is sent to
3 the court?

4 MR. KOZOLCHYK: I'm not saying every
5 case is like that. The most -- a very
6 small, without any issues, if I'm able to
7 get all the information I need right
8 away, it could potentially take just a
9 few hours between an initial interview
10 and getting the case filed, if everything
11 goes right and there's no additional
12 issues, but other cases of a small amount
13 of money can be much, much more.

14 MR. FAY: The reason I ask this
15 question is because I think, like a few
16 of the other commenters, are struck by
17 your commitment to not take on certain
18 low value cases, I'm wondering about that
19 because I think that the point that the
20 judges are making about fees, I'm
21 wondering if you see it more as what your
22 fees are in relation to the claim or what
23 your fees are in relation to the work
24 that you did, because if your fees are
25 \$4,000, because you took ten hours to do

1 the case, it's one thing, but if your
2 fees are \$4,000 because you took a small
3 paycheck case and did more investigation
4 than was necessary, or refused to settle
5 right away or didn't take the phone calls
6 of the defendants so that you can keep
7 preparing a motion in limine or any other
8 motion that comes into the course of
9 things, that's different than if it just
10 took you five or ten hours to file the
11 case and that's what it took because you
12 had to do the interview. So I'm
13 wondering, if you're not taking these
14 cases, is it because you're worried about
15 the disparity between the value of the
16 case and your fees or because you don't
17 think that you can do the case in an
18 efficient enough time that your fees
19 would be reasonable, which would be the
20 standard?

21 MR. KOZOLCHYK: The definition of
22 reasonable I have come to learn can vary
23 if the case is very small. Reasonable is
24 not just an hour for hour multiplied by
25 your hourly rate for time needed to do

1 the case. There's a few cases in here
2 where there's a proportionality analysis
3 where the amount of fees is not
4 proportionate to the recovery. And so,
5 if a client is owed \$800 and they had a
6 very unusually complex fact pattern that
7 led to that and they had other issues,
8 even if it took me a substantial amount
9 of time, it's unlikely that a judge is
10 going to find that reasonable, because
11 the value of the claim is particularly
12 small.

13 In my experience, I have come to
14 realize and learn in judges' opinions
15 that the smaller the case is, the more
16 the thought is, "Well what is the
17 proportionate fee for that," and I may
18 not get credit for the actual work
19 required to go through that, and so I
20 don't believe it's a measure of
21 inefficiency, but I don't believe I can
22 -- I don't believe I can take these
23 smaller cases and put in the time I need
24 to and be paid a reasonable fee for that
25 without it appearing as though I'm

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1 litigating just for my attorney's fees.
2 And sometimes defendants just tender the
3 small check and don't want to pay the
4 attorney's fees and that puts me in a
5 difficult position. Now I'm litigating a
6 case where my client has already gotten
7 paid, but I have not gotten paid, and I
8 can't afford to take these cases pro
9 bono. So there's a whole host of
10 problems and issues in these smaller
11 cases, and the judges can perceive it as
12 me just litigating for my attorney's
13 fees, which hurts my credibility and
14 which hurts my other cases of greater
15 value. And so, I have made the decision
16 that it's better off for everyone
17 involved if I simply direct those
18 particular people to -- they can bring
19 the claim in small claims court
20 themselves, they can contact Legal Aid or
21 they can contact the Department of Labor,
22 and they are also free to speak to a
23 different attorney if they desire to do
24 so.

25 MR. FAY: I appreciate that

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1 explanation. I just have one more
2 question. I think you mentioned in your
3 response and in your statement today that
4 during the time that most of this conduct
5 discussed in the referral letter
6 happened, it was a very stressful and
7 overwhelming time for you in conjunction
8 with a lot of things happening in your
9 life. So I see that that was
10 overwhelming and made it difficult for
11 you to manage your caseload in a
12 professional manner.

13 But do you have an idea of -- in the
14 event that things become overwhelming
15 again in your personal life or your
16 professional life, what is the number of
17 cases that you think you can manage in a
18 professional and courteous and ethical
19 manner without it becoming overwhelming
20 from a stress perspective?

21 MR. KOZOLCHYK: I haven't put a
22 number on that. I'm sorry, I haven't put
23 a number on that.

24 MR. FAY: That's okay. It's maybe
25 something to think about when you're

1 managing your caseload going forward, is
2 determining what is the point in which
3 this is going to cause more stress than
4 is easy to handle.

5 MR. KOZOLCHYK: I will tell you
6 something, as part of this experience and
7 an intense self-reflection and personal
8 growth and counseling with my attorney,
9 Mr. Rothman, I can tell you that I'm
10 better equipped now with dealing with
11 these situations that I dealt with
12 before. I'm in a better position now
13 to -- if I get a difficult opposing
14 counsel or a difficult situation, if I
15 feel like I'm personally attacked, to not
16 reciprocate in-kind and to focus on the
17 issues and to not elevate the temperature
18 in the room. So I'm in a better position
19 now to deal with those situations than I
20 was before.

21 MR. FAY: That's all my questions.
22 Thank you.

23 MR. HEARON: Anita?

24 MS. VICIANA: Hi, Elliot. Can you
25 confirm the date which you sent your

1 response?

2 MR. KOZOLCHYK: To the letter of
3 referral response?

4 MS. VICIANA: Yes.

5 MR. KOZOLCHYK: I can certainly get
6 you that date. I'm going to look it up
7 right now. I think it was June 11, 2021,
8 but I need to confirm that. It was June
9 11, 2021, when the letter was submitted.

10 MS. VICIANA: Thank you.

11 Phoebe, I will call her your
12 stepdaughter, has she ever gone by any
13 other name?

14 MR. KOZOLCHYK: Her legal first name
15 is Justice and her middle name is Phoebe,
16 so Justice Phoebe Dautz, but she goes by
17 Phoebe.

18 MS. VICIANA: Does she ever use any
19 other last name?

20 MR. KOZOLCHYK: May I ask her?

21 MS. VICIANA: Sure. I don't have
22 any issues, but I'm going to defer to the
23 chair with that.

24 MR. HEARON: That's fine.

25 MR. KOZOLCHYK: Okay, one moment.

1 In her emails, she puts Phoebe
2 Kozolchyk.

3 MS. VICIANA: She doesn't legally
4 have that name?

5 MR. KOZOLCHYK: Correct.

6 MS. VICIANA: Out of curiosity, why
7 does she go by your same last name?

8 MR. KOZOLCHYK: She's considered
9 changing her name to that and we're
10 family.

11 MS. VICIANA: I don't have any other
12 questions.

13 Thank you.

14 MR. HEARON: Val, because you
15 indicated you were going to be leaving by
16 5:30, if you have any questions.

17 MR. RODRIGUEZ: I appreciate the
18 opportunity.

19 I kind of have had -- Elliot, what
20 would you do differently -- what do you
21 think you can do differently
22 realistically going forward?

23 MR. KOZOLCHYK: Every day I'm
24 working to not react the way I did before
25 to difficult, stressful and

1 confrontational litigation and I am much
2 better now than I was before. I am not
3 perfect. I am not perfect. I want to go
4 back to the Dahdouh case that Mr. Yearick
5 discussed. That was a whole other
6 conflict, but I did not -- I did not yell
7 or speak over or address in an
8 unprofessional way the other side. That
9 conflict occurred and I believe the judge
10 was angry at both sides and so I received
11 the order and it was not particularly
12 favorable to me either. But my conduct
13 there, it was not a re-repetition of
14 everything that has been going on before
15 2019 for me, and I was very careful about
16 the way I acted at that time and not
17 elevate my voice, not interrupt the other
18 side, not to engage or yell at the other
19 side. It was very, very stressful for me
20 because I was being yelled at with
21 profanities and being attacked personally
22 and I did not reciprocate in-kind. It
23 wasn't perfect and the judge's order
24 reflects it was not perfect, and in
25 particular, the actual substance of my

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1 conduct of that event was that the
2 objections took longer than they should.
3 And I agree that I could be long-winded
4 sometimes. And each time opposing
5 counsel interrupted me, because I wasn't
6 going to engage him, I stopped speaking
7 and when he finished speaking, I
8 continued with my objection. And I
9 should have been more succinct, and I
10 accept that. And I will be more succinct
11 in the future.

12 I tried very hard not to lose my
13 cool. I am not a hundred percent and I'm
14 not perfect. I've grown a lot since 2019
15 and what happened before 2019. So as far
16 as what I can do moving forward is to
17 continue on this track and this journey
18 that I began in 2019 to not reciprocate
19 in-kind when there's conflict, to keep my
20 head focused on the issues relevant in
21 the litigation for me in any particular
22 case, take out the emotion and not react
23 in-kind. That's what I strive to do and
24 each day, I'm getting better and better.

25 MR. RODRIGUEZ: Thank you. That's

1 all I have.

2 MR. HEARON: Bily?

3 MS. FERNANDEZ: I don't have any
4 questions.

5 MR. HEARON: Alison?

6 MS. SMITH: Yes, thank you so much.

7 Mr. Kozolchyk, I apologize I'm not
8 on the video this evening. I'm having
9 difficulty with my WiFi. I did have some
10 questions for you.

11 Before I ask my questions, I wanted
12 to extend condolences for the losses that
13 you've experienced. I know those things
14 are difficult and the practice of law in
15 and of itself is difficult, and also
16 sitting here before all of us is probably
17 not the most fun experience and probably
18 a little intimidating, but it's
19 important, so I appreciate you appearing
20 and communicating with us and
21 accommodating the questions that we have.

22 That being said, I wanted to ask
23 you, you were asked a question earlier
24 about managing the difficulties, the
25 stressors that you've encountered in your

1 life, and I wanted to follow up on that
2 question and ask you, what do you do
3 currently outside of speaking to
4 Mr. Rothman -- I know you mentioned him
5 quite a few times and it sounds like he's
6 a great mentor to you and in giving you
7 some advice regarding your practice --
8 but what do you do in a very pragmatic
9 sense in terms of dealing with the
10 stressors of everyday life, so that
11 doesn't seep into your practice and how
12 you conduct your business?

13 MR. KOZOLCHYK: Like do I exercise
14 or something?

15 MS. SMITH: Anything that you do. I
16 know we talked about therapy, which I'm a
17 big advocate for. Mental health and
18 attorneys is something that is very
19 serious and it should be pursued
20 meaningfully. But outside of that, since
21 you already said you haven't retained any
22 sort of psychiatrist or psychologist or
23 therapist or clinical social worker,
24 anybody, what else do you do? Is there
25 anything that you do that helps you with

1 the stressors? Because I know you have
2 stressors, we all do and we all deal with
3 them in different ways. So outside of
4 just saying, "Well, I take the high road,
5 and I try not to engage and I focus on
6 the issues," What do you do in a
7 pragmatic sense to deal with the issues
8 that you are facing every day, the
9 caseload, the clients who are sometimes
10 difficult, the courts?

11 MR. KOZOLCHYK: First of all, I'm
12 very open to therapy and I'm not opposed
13 to that at all, and Mr. Rothman and I
14 have discussed that. I have a close
15 friend I talk to and I hash out a lot of
16 issues and I confide in, that I've known
17 for a very very long time.

18 MS. SMITH: We're hearing somebody's
19 conversation in the background. I wanted
20 to make sure that the record was clear.

21 MR. HEARON: It was Mr. Olin.
22 Please mute your microphone.

23 MS. SMITH: Okay.

24 MR. KOZOLCHYK: And honestly -- can
25 you hear me?

1 MR. HEARON: Yes, Elliot, go ahead.

2 MR. KOZOLCHYK: And I confide in
3 Phoebe, too, and I'm trying to get in a
4 routine to exercise and to eat healthy.
5 So just to distill that again succinctly.

6 MS. SMITH: So are you involved in
7 any organizations, any voluntary bar
8 associations, like the Dade Bar
9 Association, or anything that's more
10 targeted towards your area of practice?
11 All of those things I find very helpful
12 in terms of learning more about your
13 practice, understanding the right way to
14 litigate, et cetera. Are you involved in
15 anything like that, or no?

16 MR. KOZOLCHYK: I am not. I am
17 certainly open to being part of that, but
18 I am not currently.

19 MS. SMITH: So you practice solo,
20 not in concert with any other colleagues
21 really?

22 MR. KOZOLCHYK: Correct. I'm a solo
23 practitioner.

24 MS. SMITH: Okay. I want to ask you
25 a question, a purely simple one, a

1 straightforward one. There's lots of
2 banter going back and forth earlier as to
3 what the judge said in the order and what
4 you said in the reply, et cetera, et
5 cetera. Rather than doing that, I just
6 wanted to know from your perspective,
7 because I know you disagreed with one of
8 the committee members who said you were
9 less than candid with the court and
10 opposing counsel, and you disagreed with
11 that respectfully. What would you say
12 that you did wrong that led you to be
13 here speaking to us now? What do you
14 think you did?

15 MR. KOZOLCHYK: Several things.
16 Several things.

17 MS. SMITH: Okay.

18 MR. KOZOLCHYK: First I took small
19 cases that -- I took small cases and it
20 led to a lot of conflict, and I didn't
21 handle that conflict well. And so -- and
22 then other cases that were not small
23 cases, but they were contentious with --
24 they were contentious litigation with
25 opposing counsels, I didn't handle those

1 well either and -- so I work very hard to
2 not reciprocate in-kind and to try to
3 take the high road, and not enhance the
4 temperature in the room, and to craft my
5 emails as substantively and
6 dispassionately and clinically as
7 possible focused on the issues. So I was
8 much more emotional in my litigation
9 before. And I took cases -- the smaller
10 cases led themselves to that kind of
11 emotional conflict to begin with, because
12 they're smaller and there's attorney's
13 fees involved, so these were two things
14 that fed off each other in a negative
15 way.

16 MS. SMITH: Do you feel that your
17 conduct warranted you being referred to
18 this committee? Do you think that was an
19 appropriate response to your conduct?

20 MR. KOZOLCHYK: I've been engaged in
21 intense self-reflection since 2019 on
22 everything that has happened here. This
23 letter has been extremely painful for me.
24 That question certainly causes a lot of
25 reflection.

1 MS. SMITH: What do you think when
2 you reflect?

3 MR. KOZOLCHYK: I can understand why
4 I was referred to the committee and I try
5 every day to ensure that doesn't happen
6 again and that these issues don't
7 continue to follow me.

8 MS. SMITH: Okay. I wanted to ask
9 you also. Doesn't mean that the
10 committee is going to follow what you
11 have to say here in response to my
12 question or even give it a serious
13 consideration, but it would be useful for
14 me to know what you think would be a
15 fitting response by the committee to this
16 referral. What do you think should
17 happen?

18 MR. KOZOLCHYK: It is my
19 understanding that the committee has a
20 lot of options available that it could
21 recommend.

22 I need to -- my ability to practice
23 in the Southern District of Florida is
24 extremely, extremely important to me and
25 to my stepchildren and to my entire

1 career and my entire practice. I will do
2 therapy. I will take classes. I will
3 get a mentor.

4 I understand that the committee has
5 a lot of options. I hope and I pray that
6 I can still continue to practice in the
7 Southern District, and I know this is
8 very serious, and so I would ask that the
9 committee consider the alternatives that
10 allow me to practice in the Southern
11 District of Florida.

12 MS. SMITH: Just a quick question
13 because I know probably others have some
14 questions, and I'm wrapping up, and this
15 is only because of my ignorance, I don't
16 know, I have never handled an FLSA claim,
17 so I'm not sure. When you say you have
18 to practice in the Southern District,
19 those are not claims that you can file in
20 state court? And, again, I don't know,
21 so pardon my ignorance.

22 MR. KOZOLCHYK: No problem. I'm
23 glad you asked that question so I could
24 answer it. I want it to be understood
25 and known.

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1 This is a federal statute, so even
2 if I file in state court, they can always
3 remove it to federal court. It can be
4 forced into federal court whether I
5 choose to file there or not.

6 MS. SMITH: Understood. Those are
7 all my questions. I appreciate your
8 participation. Thank you.

9 MR. KOZOLCHYK: Thank you.

10 MR. HEARON: Andrew?

11 MR. FIGUEROA: I have no questions,
12 Bill.

13 MR. HEARON: Valencia?

14 MS. GALLON-STUBBS: Yes. Just a
15 follow-up and I do appreciate your time
16 and I'm sorry for the logistics with my
17 camera right now.

18 What type of alternative would you
19 recommend for yourself? You heard the
20 question about what would you recommend
21 for this committee as it relates to the
22 purpose for which we're here based on
23 your actions, behavior, et cetera. So do
24 you have any recommendations for
25 yourself? I would just like to hear

1 them.

2 MR. KOZOLCHYK: I've already engaged
3 in tremendous personal growth to make
4 sure that this doesn't happen again. But
5 I think if I need to have a mentor, if I
6 need to take classes, if I need to get
7 therapy, I can certainly do those things,
8 maybe probation, to give me the
9 opportunity to continue practicing while
10 on probation to show the committee that
11 this will not happen again.

12 MS. GALLON-STUBBS: I appreciate
13 your frankness.

14 Are you willing to a particular time
15 frame? Is this something that you're
16 willing to commit, a time frame?

17 MR. KOZOLCHYK: In terms of
18 probation?

19 MS. GALLON-STUBBS: Whether it's
20 probation, whether it's mentorship,
21 whether it's some type of mental health
22 classes, courses, et cetera.

23 MR. KOZOLCHYK: I would commit to
24 whatever the committee required sincerely
25 and in good faith.

1 MS. GALLON-STUBBS: Thank you. I
2 have no further questions. I appreciate
3 it.

4 MR. HEARON: Thank you.
5 Bernardo?

6 MR. LOPEZ: Thank you, Mr. Chairman.
7 Mr. Kozolchyk, I join the other ones in
8 telling you I'm sorry for your loss and I
9 applaud you for being the father to your
10 fiancée's children.

11 I also note we've been going for an
12 hour and a half. Did you want to get a
13 drink of water or anything?

14 MR. KOZOLCHYK: I'm on my second
15 water right now.

16 MR. LOPEZ: I have two questions
17 that I just want to clarify on the record
18 and I note that you have your personal
19 statement in front of you.

20 MR. KOZOLCHYK: Yes.

21 MR. LOPEZ: If I can direct you to
22 page four, and there's a portion right in
23 the middle of the page that's kind of
24 highlighted, it's bolded in, and I will
25 just read that to you, where you say

1 "Second, I thought in retrospect,
2 erroneously, that avoiding the task of
3 reviewing and finalizing a written
4 agreement would avoid further delay and
5 avoid incurring additional unnecessary
6 attorney's fees."

7 And I just want to clarify. Are you
8 saying that you -- because I think
9 there's a little bit of conflict in your
10 statements.

11 Are you saying that you did
12 intentionally avoid having that
13 settlement reviewed by the court, but
14 only for the reason to avoid further
15 litigation, or I think you made the
16 statement in another part that you never
17 intended to avoid any kind of review by
18 the court, so I'm wondering if you can
19 clarify that.

20 MR. KOZOLCHYK: Sure.

21 The actual quote, unquote agreement
22 that this case -- this particular case,
23 the Shuman case was disposed with was
24 basically a phone call that said an
25 agreement, "If you pay me \$2,500, we can

1 just have the case dismissed without
2 prejudice." I notified the court on
3 three different filings that I was
4 receiving the money. It was never kept
5 as a secret that I was receiving these
6 fees and costs.

7 I deliberately, in reaching that
8 agreement with the other side, I was
9 trying to avoid a settlement agreement
10 and a formal settlement, because it would
11 take more time -- because it would take
12 more time and because it would require my
13 client to agree to a lot of other
14 non-monetary terms. They were not
15 offering more money to my client. I
16 specifically asked the other side, "Are
17 you agreeing to pay my client anything in
18 return for entering into a settlement
19 agreement?" And they declined to pay my
20 client any additional money, so it was to
21 save time in having to draft it, because
22 I was already receiving less money than
23 the time I put in the case. This case
24 was already a loss for me for all the
25 time and cost I invested in it. I was

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1 trying to dispose of it as cheaply in
2 terms of time as I could, but without
3 ever hiding the fact that I was getting
4 paid from the judge.

5 MR. LOPEZ: I think that answered my
6 question.

7 If I can have you go to page 28 of
8 your statement. This is where you're
9 talking about Judge Dimitrouleas's order
10 in the FLSA cases. There's a portion
11 here towards the bottom of the page
12 that's indented, looks like a block
13 quote, where does that quote come from?
14 Is that from a transcript? Is that from
15 an email that you sent to opposing
16 counsel or is that just the best
17 recollection of what you said to opposing
18 counsel?

19 MR. KOZOLCHYK: That is an actual
20 transcript of an excerpt -- that's an
21 excerpt from the actual transcript of the
22 hearing that gives rise to portions of
23 this letter of referral. This is
24 literally what I represented to Judge
25 Middlebrooks at the hearing verbally.

1 MR. LOPEZ: Okay. So this is in
2 open court and you're talking to Judge
3 Middlebrooks and this is what you said?

4 MR. KOZOLCHYK: Yes.

5 MR. LOPEZ: I just wanted to clear
6 that. I wasn't sure.

7 Also, I'm a criminal practitioner so
8 I'm completely ignorant in most civil
9 matters, especially FSLA cases. So maybe
10 if I just ask you a few questions and
11 educate me on those kind of cases. The
12 statute does provide for attorney's fees;
13 is that correct?

14 MR. KOZOLCHYK: And costs, yes, to
15 prevailing plaintiffs.

16 MR. LOPEZ: Would it be fair to say
17 that the statute provides for attorney's
18 fees and costs to kind of incentivize
19 attorneys to take those cases?

20 MR. KOZOLCHYK: I mean, this is the
21 policy rationale of congress. A lot of
22 times clients can't afford an attorney,
23 that's for sure, and then if you hire an
24 attorney and you litigate the case, a lot
25 of the times the attorney's fees are

1 going to overcome the entire value of the
2 plaintiff if the defendant chooses to
3 litigate it all the way to trial. It's
4 not uncommon in this area of law that
5 fees exceed the full value of the claim,
6 particularly if a defendant wants to
7 litigate it to trial.

8 It will be impractical for an
9 attorney to take the case without the --

10 MR. LOPEZ: Right, no, no. It's a
11 way of getting attorneys to come in and
12 help these people who have maxed out on
13 small wages; is that correct?

14 MR. KOZOLCHYK: I wouldn't say just
15 small wages, any kind of wages.

16 MR. LOPEZ: Also, it probably serves
17 as an incentive for the defendants to
18 come to a similar agreement earlier
19 because they can either pay -- like in
20 these last paycheck cases, they can pay
21 somebody the \$900 or \$500 that they owe
22 or if they want to continue in that and
23 come to some kind of settlement, they
24 know that the lawyer fees are racking up,
25 they are obstinate about it; would that

1 be fair?

2 MR. KOZOLCHYK: Yes. And I will
3 just expand on that. There's four
4 different sources of liability here.
5 There's the underlying wage claim,
6 there's liquidated damages that double
7 the underlying wage claim, there's the
8 attorney's fees and costs to the
9 plaintiff entitlement to that, and
10 there's the defendant's attorney's fees
11 and costs that they need to pay to
12 continue to defend the litigation.

13 MR. LOPEZ: Based on your experience
14 in doing these kind of cases, would it be
15 fair to say that the plaintiffs in these
16 kind of cases are mostly middle to low
17 income people?

18 MR. KOZOLCHYK: Yes.

19 MR. LOPEZ: And if they weren't
20 there with an attorney, they would be
21 facing an employer who does have an
22 attorney?

23 MR. KOZOLCHYK: Typically, yes, and
24 typically well funded with a lot of
25 resources.

1 MR. LOPEZ: Because I guess I'm a
2 little bit concerned about your statement
3 saying that you have given those up. I
4 understand why you're saying that. I
5 really do.

6 But I think the issues that the
7 judges had with you in these cases was
8 not that you were bringing them or that
9 the fees might exceed what you're asking
10 for for the plaintiffs, because I think
11 congress kind of understood that, but I
12 think what the judges were saying in
13 these cases are that you were inflating
14 your fees by dragging the litigation on.
15 And I understand that sometimes the
16 judges in the district court do discount
17 fees. I know that happens in criminal
18 cases which attorneys will often give
19 their bills to the judges, and very
20 rarely do they get paid a hundred percent
21 of what they're asking for. And I think
22 the attorneys know that. There's a
23 little game that gets played and they
24 know that they have to ask certain judges
25 for more, and they know that they have to

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1 file certain motions with the judges
2 ahead of time if they want to get paid
3 for those kind of things, so I know that
4 happens. But I think you might be
5 misunderstanding what the court is saying
6 and what the committee is saying in
7 bringing this suit to your attention in
8 those kind of small cases. It's not that
9 the fees might exceed what you're asking
10 for, and it's way below what the
11 diversity requirement is in district
12 court. It might get some of the judges
13 frustrated. But the magistrate judges
14 that handle these cases, they are some of
15 the more level headed and understanding
16 judges that I've ever been in front of,
17 so I think they would understand that you
18 are bringing this and you are doing a
19 service to these people and if it takes
20 you five hours to do this case -- and it
21 takes you five hours to do the case, then
22 you should get paid appropriately, no
23 matter what the response is or what
24 you're asking for.

25 I think the judges just had an issue

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1 with you kind of inflating your hours,
2 and I'm hoping you understand that.

3 MR. KOZOLCHYK: If I may address
4 that.

5 Taking you to the example of one of
6 these cases, the Batista case, they
7 offered -- I believe they offered -- I
8 don't want to make a misrepresentation
9 here. Off the top of my head, I believe
10 they offered \$1,500 to resolve my claim.
11 I believe that number is correct. I
12 don't think it was 2,000. I think it was
13 1,500, off the top of my head. I had --
14 I had -- during the initial settlement
15 discussions, I offered 2,750 in
16 attorney's fees, plus costs. I offered
17 to let the court determine attorney's
18 fees and costs, and I offered \$2,000 of
19 attorney's fees. This was a live phone
20 conversation with the defendant. The
21 first time we had a phone conversation
22 about settlement, I made those offers.
23 They could have let the court determine
24 attorney's fees. They could have
25 accepted my initial offer of 2,750 plus

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1 costs or they could have accepted \$2,000.
2 Even if they didn't like 2,000 or 2,750,
3 I included the offer, "Let the court
4 determine the attorney's fees." The
5 defendant said in response to let the
6 court determine attorney's fees, he told
7 me over the phone, "I would rather pay an
8 attorney \$10,000 than let the court
9 determine attorney's fees." That's
10 verbatim what he said. He doesn't deny
11 saying that either. He doesn't deny
12 saying that either.

13 Ultimately, I ended up taking the
14 case on appeal when my fees were denied,
15 and the 11th Circuit and their decision
16 said that I did not accept defendant's
17 offer for attorney's fees, which I think
18 it was approximately -- I think it was
19 approximately \$1,500. When the case was
20 remanded, I withdrew my motion for
21 attorney's fees.

22 In that case, in Batista, I withdrew
23 my motion for attorney's fees and I
24 stopped seeking attorney's fees in that
25 case. I brought that case up to

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1 illustrate in what you said that that is
2 a case where I offered up front. In my
3 opinion, it was pretty modest numbers for
4 attorney's fees, and I included the offer
5 that the court determine attorney's fees,
6 and I still ended up in a place I don't
7 want to find myself again professionally.

8 Similarly in a Soto Aldana case,
9 from the outset, from the very, very
10 beginning, I included an offer to let the
11 court -- my sum and offer was to pay my
12 client's claim, agree to confirm good
13 faith as to our attorney's fees. "If we
14 can't resolve the issue of attorney's
15 fees and costs, I consent to let the
16 court determine attorney's fees." And
17 that is on page seven. And that was
18 offered multiple times, time and time.
19 It was offered on April 17, May 3rd, May
20 6th, May 17 and May 21st, and despite
21 from the beginning of the case, agreeing
22 to let the court determine attorney's
23 fees, I find myself in a position I did
24 not want to be in.

25 So in my experience, it is not so

1 simple as to just simply try to offer to
2 let the court determine attorney's fees,
3 because even if you do that, it can be
4 taken the wrong way.

5 So I have filed -- I have litigated
6 over 700 cases. Half of the eight cases
7 in this letter dealt with these much
8 smaller claims. These much smaller
9 claims in my experience drastically lead
10 to my credibility being compromised and
11 the appearance that it is just about my
12 attorney's fees, and so -- even when I
13 make an offer at the outset to let the
14 court determine attorney's fees.

15 I don't think it's as simple as
16 just -- I'm not -- I have found that
17 these cases to be very problematic for me
18 professionally and I'm much better off
19 not taking them.

20 MR. LOPEZ: I have no further
21 questions, Mr. Chairman.

22 MR. HEARON: Thank you.

23 Mr. Kozolchyk, you have four more
24 people on the list to question you. Do
25 you need to take a break?

1 MR. KOZOLCHYK: I thank you very
2 much. I'm actually doing really well.
3 But if anyone else needs to take a break,
4 no problem.

5 MR. HEARON: Bruce, you're up.

6 MR. LEHR: Thank you.

7 Good afternoon, Mr. Kozolchyk. You
8 said on a couple of occasions that if
9 this was filed in state court that it
10 would run a good chance of it being
11 removed to federal court. Why would a
12 defendant want to move to a more
13 expensive, more time consuming, more
14 complicated forum by removing from county
15 court to go to the district court?

16 MR. KOZOLCHYK: Just so you're
17 aware, I have filed a few cases in state
18 court, several in state court and several
19 have been removed to federal court.

20 You're asking me to speculate on
21 what was in the mind of the defendants in
22 doing that. I'm happy to do that, but I
23 want to be clear I can't necessarily know
24 what's going on in their head in making
25 that decision. But I can certainly

1 estimate and speculate why they might
2 want to do that.

3 MR. LEHR: Go ahead.

4 MR. KOZOLCHYK: Number one, if --
5 some attorneys, they do a volume of
6 defense work and they specialize in
7 defending cases in federal court and
8 their systems are aligned with the
9 federal practice, and so as a matter of
10 procedure, they will remove every one of
11 these state FLSA cases to federal court
12 as a matter of practice. A second reason
13 is that a federal judge may be more
14 familiar and equipped to adjudicate the
15 obscure FLSA legal issues as an exemption
16 in a more predictable way. I'm trying to
17 think if there might be a third reason.
18 Maybe the misimpression -- and I'm really
19 speculating here, I don't actually know.
20 Maybe the misimpression that the
21 plaintiff's attorney filing in the state
22 court is not prepared to litigate the
23 case in federal court.

24 MR. LEHR: Okay, I understand. You
25 are a sole practitioner, correct?

1 MR. KOZOLCHYK: Yes.

2 MR. LEHR: So you basically get to
3 eat what you kill?

4 MR. KOZOLCHYK: Right, yeah.

5 MR. LEHR: Explain to me why would
6 20 open cases, you would have, I think
7 you said 50 unfilled cases, when it takes
8 you an hour to three hours to file? Why
9 would you want to carry a backlog like
10 that?

11 MR. KOZOLCHYK: I don't have an
12 exact number on my backlog and I think I
13 gave a range of 30 to 50, but it's the
14 best estimate. I don't have the number
15 offhand. It's not that I want to carry a
16 backlog. These cases are -- can be time
17 consuming and taxing. I had four trials
18 so far this year in federal court. This
19 has been very busy. This experience with
20 the committee has been very taxing. It's
21 not something that I would want to do.

22 MR. LEHR: Do you send out demand
23 letters?

24 MR. KOZOLCHYK: It's not required
25 under the Fair Labor Standards Act. The

1 Florida Minimum Wage Act requires it.
2 When I bring a claim under the Florida
3 Minimum Wage Act, I do send a pre-suit
4 demand letter.

5 MR. LEHR: Because you're required
6 to. But with the federal claim, the ones
7 that you are now turning away, you would
8 not send a demand letter to see what
9 happens and maybe help out that client?

10 MR. KOZOLCHYK: Let me explain why.
11 When I have a client -- if a client comes
12 to me for a last paycheck, I have to do a
13 complete interview to cover all the other
14 issues. Now when I'm speaking with them
15 over the phone, I see if there's any
16 other potential claim, so I cover the
17 extent of it, there's other monies owed.
18 If there's any kind of additional monies
19 owed. Let's say they're not owed any
20 other monies, it's solely a last paycheck
21 and nothing else. For me to send a
22 demand letter, I still need to gather a
23 tremendous amount of information. I need
24 to know exactly who the defendant is, and
25 sometimes there are multiple

1 corporations, and the statute allows it
2 to sue individuals provided the
3 individuals fit within certain
4 requirements of the statute that open up
5 those individuals to individual
6 liability, so I have to do an interview
7 not only on each defendant corporation
8 and their interrelationships, but also as
9 to any individuals that may fall within
10 the scope of individual liability under
11 the statute. And I still have to analyze
12 exemptions and coverage under the statute
13 and if they are misclassified as an
14 independent contractor, whether we have a
15 viable route to argue that they are
16 actually an employee, because I'm an
17 independent contractor, they are not
18 available under the statute. And so,
19 it's not just simply sending them out.
20 When I send that demand letter out, I
21 need to know where I stand on every one
22 of these issues.

23 And so, the time I put into a case
24 is not practical. It's not just as
25 simple, "Oh, you're owed a hundred bucks,

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1 let me send a demand letter." What if my
2 client did the math wrong? Because
3 that's another thing. I have to
4 independently calculate each one of these
5 claims, and the calculation is a function
6 of their date, ranges of employment,
7 their hours worked and, of course, I
8 can't just say, "How many hours have you
9 worked this week," 65 or whatever it is,
10 I need to know the factual foundation
11 behind those hours and I have to know the
12 schedule, when did they come in to work,
13 when did they leave work. Sometimes I
14 have clients with schedules that on one
15 week they're working certain days and
16 then it varies every single week, and
17 coming up with some kind of
18 representative schedule that might
19 reflect their actual hours worked, unpaid
20 time versus partially paid time. So I
21 have to actually do the interview to
22 calculate my client's claim, too, because
23 I can't just rely on, "Oh, my client says
24 he is owed a hundred dollars," and just
25 accept that. I need to know how we get

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1 to the hundred dollars and oftentimes my
2 clients do not calculate their claims
3 accurately and in accordance with the
4 law.

5 The interview is a very important
6 step in the process and it requires a lot
7 of work from me to iron out every one of
8 these details, and so it's not just
9 simply someone calling me for a hundred
10 bucks and I will just send out a demand
11 letter for a hundred dollars. There's a
12 whole lot more to it than that.

13 MR. LEHR: One last question,
14 believe it or not, you have described a
15 relatively recent case where you and
16 opposing counsel were not getting along,
17 him attacking you and you were very proud
18 that you were able to maintain your
19 composure and not raise your voice and
20 not interrupt him, and you told the
21 committee this is because this committee
22 has been in the back of your mind.

23 Let's say this resolves in a manner
24 that you can go on practicing these cases
25 in the Southern District, what happens

1 when the next confrontation happens and
2 you don't have the committee hanging over
3 your head, then what?

4 MR. KOZOLCHYK: Mr. Lehr, I can
5 assure you, I will have this committee
6 hanging over my head for the rest of my
7 practice because I fear, if I'm permitted
8 to practice, continue practicing in the
9 Southern District of Florida, I fear what
10 might happen if I am referred again.

11 MR. LEHR: Thank you very much.

12 MR. HEARON: I asked Mr. Kozolchyk
13 if he was okay. Maribel, I failed to ask
14 you if you were okay. Do you need to
15 take a break?

16 THE REPORTER: No, I'm fine. We can
17 continue. Thank you.

18 MR. HEARON: Celeste?

19 MS. HIGGINS: Thank you, Mr. Chair.

20 Mr. Kozolchyk, I'm a sole
21 practitioner. I'm a criminal defense
22 attorney. I have my own practice. So I
23 can understand what it feels like to have
24 the weight of all the cases on only your
25 shoulders, so I relate to that. I am

1 somewhat less concerned, even though I'm
2 a former federal public defender, I'm not
3 sort of concerned with your decision not
4 to take on smaller cases. Economically I
5 understand that.

6 My concern is something along the
7 line of what Bruce just asked you, which
8 is the behavior during deposition and
9 during exchanges with opposing counsel.
10 And I accept your statements that you are
11 always going to remember this experience.
12 I'm wondering if you ever, before this
13 happened and before the tragic events
14 that were happening in 2019, had you ever
15 been in a situation where you were
16 reprimanded for your conduct in a
17 deposition, where you were sanctioned for
18 your behavior where something like this
19 happened before?

20 MR. KOZOLCHYK: Not in deposition.
21 The Hernandez-Sabillon case, which is in
22 the letter of referral, which dates back
23 to 2015 or 2014, specifically pertains to
24 conduct at a deposition. I had a very
25 contentious relationship with the

1 opposing counsel and I sought to record
2 what was going to transpire at the
3 deposition via audio. I was not aware at
4 the time -- again, this was in 2014 or
5 2015. I opened my firm in 2012. I was
6 not aware at the time that it would be
7 improper to record the audio of the
8 deposition. And opposing counsel
9 literally grabbed the microphone and
10 ripped it out of my laptop, and what
11 ensued thereafter was a heated verbal
12 argument where I attempted to regain my
13 property.

14 MS. HIGGINS: Is that the one
15 reported on by the Daily Business Review?
16 That one?

17 MR. KOZOLCHYK: Oh, I don't know if
18 it was reported. I have no knowledge of
19 that --

20 MS. HIGGINS: Okay.

21 MR. KOZOLCHYK: -- if it was
22 reported by the Daily Business Review.

23 MS. HIGGINS: So that sounds like
24 you're suggesting that was sort of out of
25 the ordinary. We have all experienced

1 situations where we encounter bullying in
2 litigation, in depositions. Would you
3 say that that's a successful or effective
4 way of trying to get your position heard
5 when you're in a depo or a hearing to
6 just sort of raise your voice?

7 MR. KOZOLCHYK: Okay. So the event
8 in the Hernandez-Sabillon case in 2014 or
9 2015, no, I don't believe yelling and
10 raising my voice is an effective way of
11 getting my point across, and I certainly
12 didn't do that in the Dahdouh case. No.
13 And I try -- that's one of the things
14 I've been working on is to not respond,
15 to be more dispassionate and less
16 emotional and not seek to increase the
17 temperature in the room.

18 MS. HIGGINS: Prior to these events
19 happening and this committee being on
20 your mind, is that something that would
21 happen then kind of more frequently?

22 MR. KOZOLCHYK: I don't think -- and
23 these events -- I've litigated over 700
24 cases. There are eight cases in this
25 letter.

1 MS. HIGGINS: I heard you say that.
2 I'm talking about your general practice
3 and the way you behaved.

4 MR. KOZOLCHYK: When I'm yelling in
5 a deposition?

6 MS. HIGGINS: Or, you know, behaving
7 in that aggressive manner. And I don't
8 mean aggressively pursuing your case, I
9 mean, being personally aggressive.

10 MR. KOZOLCHYK: I was aggressive
11 before. I try not to be aggressive
12 anymore.

13 MS. HIGGINS: Okay. The people that
14 you go up against, is it usually the same
15 group of defense attorneys? Do you
16 regularly see them?

17 MR. KOZOLCHYK: There are some that
18 I regularly see and I regularly see new
19 faces all the time.

20 MS. HIGGINS: Okay. I have no
21 further questions. Thank you.

22 MR. KOZOLCHYK: If I can just
23 expand, Ms. Higgins. I try very hard and
24 every day I'm growing more to not have
25 that aggressive confrontation and not

1 reciprocate in-kind. I'm embarrassed by
2 the events at the deposition and to be
3 frankly also at the Dahdouh deposition,
4 even though I tried extremely hard to not
5 engage in that. And I believe every day
6 I'm getting better and I'm not -- I'm
7 trying to avoid those kind of situations
8 in the future and de-escalate when
9 possible.

10 MS. HIGGINS: Thank you.

11 MR. HEARON: Tiffani?

12 MS. LEE: I don't have any
13 questions.

14 MR. HEARON: Mr. Kozolchyk, first of
15 all, thank you for agreeing to appear and
16 I appreciate that I denied a couple of
17 requests to delay the hearing. I'm sure
18 when we are finished today, you will be
19 happy that you got it behind you and
20 didn't postpone it for a later date.

21 I did want to note for the record
22 that one of our committee members,
23 Kimberly Gilmour, indicated to us that
24 she has had cases with you in the past,
25 so she has recused herself from any of

1 the decision-making process related to
2 your case, and I wanted you to be aware
3 of that.

4 A couple of things. Talk to me, if
5 you will, about what your understanding
6 is of when the court has to approve
7 settlements.

8 MR. KOZOLCHYK: When the parties
9 enter into a settlement agreement, it
10 must be approved by the court in order
11 for the claims to be dismissed with
12 prejudice, although some judges have
13 taken the position that even a dismissal
14 without prejudice requires a court
15 approval, in a settlement of every case.
16 If there's a settlement agreement, some
17 judges take a position that it must
18 always be reviewed. If it's a dismissal
19 without prejudice, some judges take the
20 position that because the claims can be
21 re-brought, there's no settlement that
22 needs to be reviewed.

23 MR. HEARON: So is your
24 understanding that the linchpin of that
25 analysis is whether there's a written

1 settlement agreement?

2 MR. KOZOLCHYK: No, no. Even a
3 verbal settlement. It can be a verbal,
4 settlement, too. And I accept that I was
5 wrong in my analysis in Shuman that the
6 event that transpired could be considered
7 a settlement, and I accept that I'm wrong
8 on that.

9 I can tell you the reasons why I
10 believed it was not a settlement at the
11 time, but I accept that I was wrong, and
12 I was -- I definitely did not try to hide
13 the fact that I was getting paid
14 attorney's fees and costs. I made that
15 known to the court in three separate
16 filings and it was brought up very early
17 on at the hearing as well.

18 MR. HEARON: Since 2019, have you
19 had any settlements of any cases that
20 have not been taken to the court for
21 approval?

22 MR. KOZOLCHYK: Some -- this is
23 very, very uncommon, what I'm about to
24 describe. It's not the norm at all.

25 Some defendants and their --

1 MR. HEARON: Let's start with a yes
2 or no to my question.

3 Have you had cases since 2019, since
4 all of this arose, where you have reached
5 a settlement where you have not sought
6 court approval?

7 MR. KOZOLCHYK: Yes.

8 MR. HEARON: On how many occasions?

9 MR. KOZOLCHYK: I can only think of
10 one. I can only think of one.

11 MR. HEARON: Can you tell me the
12 circumstances of that case? First of
13 all, with regard to that case, were you
14 paid a fee?

15 MR. KOZOLCHYK: Yes.

16 MR. HEARON: Was there a written
17 settlement agreement?

18 MR. KOZOLCHYK: Yes.

19 MR. HEARON: And court approval was
20 not sought?

21 MR. KOZOLCHYK: Yes. I'm eager to
22 give you the context to that situation.

23 MR. HEARON: First give us the case
24 name.

25 MR. KOZOLCHYK: Sure. One second.

1 MR. HEARON: If you have a case
2 number, that would be --

3 MR. KOZOLCHYK: I'm going to get it
4 for you right now. I'm going to try to
5 remember it. It's loading right now. I
6 will give you the case number as soon as
7 it comes up. Case number 22 -- 22-20409.

8 MR. HEARON: Okay. Your
9 explanation.

10 MR. KOZOLCHYK: Again, that's the
11 case of Arias versus Commodore Systems,
12 Inc., et al. Let me just pull up the
13 case, so I can give you the chronology.

14 MR. HEARON: Who is the Judge?

15 MR. KOZOLCHYK: Judge King.

16 In that case, we had every intention
17 of seeking the court's approval of the
18 settlement. We filed a notice of
19 settlement on June 9th, notifying the
20 court that the parties had reached a
21 settlement. The very next day, June
22 10th, the court entered a final order of
23 dismissal saying the case was dismissed
24 with prejudice and retaining jurisdiction
25 to enforce the terms of the settlement.

1 Again, we filed a notice of settlement on
2 June 9, 2022. The very next day the
3 court entered an order of dismissal
4 dismissing the case with prejudice and
5 retained jurisdiction to enforce the
6 terms of the settlement.

7 MR. HEARON: What was your fee in
8 that case?

9 MR. KOZOLCHYK: \$28,000. And so --

10 MR. HEARON: How much was your
11 client's recovery in the case?

12 MR. KOZOLCHYK: The client's
13 recovery is 32,000. I also got
14 reimbursed my costs, which were 500 some
15 dollars in costs.

16 I'd like to give you a little more
17 context, if I may.

18 The defense attorney decided that
19 given the dismissal with prejudice and
20 the court retaining jurisdiction to
21 enforce the settlement, that it will be
22 better for confidentiality to not file it
23 on the docket. And so, I didn't have any
24 objection to that. But we did not hide
25 the fact that there was a settlement. It

1 was to promote -- it was a benefit to the
2 defendant to promote confidentiality with
3 the agreement.

4 I also want to expand on that case
5 some more. That client is extremely
6 grateful to me because I -- he ended up
7 getting incarcerated around this time and
8 I drove to Miami, like -- I believe it
9 was three times -- two or three times I
10 drove to Miami to deal with the facility
11 he was incarcerated in to get him bailed
12 out, because he had no one else. He had
13 no one else but me, and he's extremely
14 thankful to me. The only other person he
15 had was his sister in a different state.
16 And I got him bailed out, and he was
17 extremely grateful for that.

18 MR. HEARON: The question that was
19 asked by Mr. Faye earlier that I want to
20 follow up on and this all has to do with
21 this notion of not taking the smaller
22 cases.

23 Very early in your testimony you
24 said that you can't take cases pro bono.
25 Do you remember saying that?

1 MR. KOZOLCHYK: Yes.

2 MR. HEARON: Can you tell me, have
3 you ever taken any of these cases pro
4 bono?

5 MR. KOZOLCHYK: If I don't win at
6 trial, they certainly convert into that
7 situation.

8 MR. HEARON: I don't think that's
9 the way the bar defines pro bono. Pro
10 bono is defined by you taking the case
11 with the understanding you will not seek
12 a fee.

13 MR. KOZOLCHYK: I understand that.

14 MR. HEARON: Let's try my question
15 again.

16 MR. KOZOLCHYK: Just to be clear,
17 I'm not reporting those events as pro
18 bono work to the Florida Bar.

19 MR. HEARON: I'm not suggesting that
20 you did, notwithstanding your comment.
21 I'm just asking if you had ever taken any
22 cases voluntarily as pro bono in the
23 past.

24 MR. KOZOLCHYK: None that I can
25 recall off the top of my head. Having

1 done the number of cases that I have
2 done, there may have been a very small
3 handful that I don't recall.

4 MR. HEARON: When Mr. Faye asked you
5 the question of how long it took for you
6 to evaluate a case and prepare the case
7 for filing in a situation where it was a
8 last paycheck case, you gave a very long
9 answer about this extensive analysis that
10 you do when people come to you, which
11 left me with the thought that boy, it
12 must be pretty hard for you to make a
13 decision on what cases to not take, which
14 are last paycheck cases, because you went
15 through this list of things that you ask
16 people. Do you do that on every case
17 where somebody comes in and says, "I
18 didn't get my last paycheck"? Do you
19 spend what sounds like an hour or more
20 going through this checklist before you
21 now decide not to take the case?

22 MR. KOZOLCHYK: No, no. That's not
23 how it happens. If someone is on a last
24 paycheck, I will ask him questions to see
25 if they are owed any more money. The

1 first thing I try to do is assess and
2 value the claim. Now, assessing -- to
3 complete an entire interview, assessing
4 the value of a claim requires that I do a
5 full calculation of their claim, you
6 know, independent of whatever
7 preconception they had of what they are
8 owed. But during the initial screening
9 to decide if we're going to move forward
10 with the full blown interview, I am just
11 assessing what is the claim to be owed.
12 If it's the last paycheck, I'll ask him
13 questions to see if they may be owed more
14 money that they are not aware of, like an
15 unpaid overtime situation. Somebody
16 could have worked at a place for three
17 years and be owed a last paycheck and it
18 turns out they're owed \$50,000 of unpaid
19 overtime that they had no idea about.

20 MR. HEARON: Let's forget about all
21 those extreme cases.

22 I come in and say, "I'm owed the
23 last paycheck," tell me how many minutes
24 you have to spend with me, assuming that
25 my answers to all of your inquiries is

1 no. I'm owed my last paycheck and only
2 my last paycheck, how long does that
3 initial interview take?

4 MR. KOZOLCHYK: The question
5 assessing whether it's only the last
6 paycheck doesn't take very long.

7 MR. HEARON: Give me a time. I'm
8 trying to assess -- you told us
9 repeatedly you don't take these cases
10 anymore. I'm trying to actually
11 visualize what that looks like in the
12 normal course of your business.

13 MR. KOZOLCHYK: It looks like a five
14 to 30 minute phone conversation where I'm
15 just -- I'm not doing the interview. I'm
16 assessing what their claim is. It's a
17 preliminary assessment.

18 MR. HEARON: All right. So after
19 five minutes or 30 minutes, you will say
20 to me, "Bill, I'm not taking any of these
21 cases anymore, because it appears that
22 you're only owed your last paycheck of
23 \$500"? Is that what happens?

24 MR. KOZOLCHYK: I tell them I no
25 longer take these kind of cases, and I

1 give them other options. They can take
2 it to small claims court themselves,
3 contact Florida Legal Aid, seek another
4 attorney or contact the Department of
5 Labor.

6 MR. HEARON: Okay. And you are the
7 person who conducts this initial
8 interview?

9 MR. KOZOLCHYK: Not always.

10 MR. HEARON: If you're not doing it,
11 who is?

12 MR. KOZOLCHYK: It could be Phoebe.
13 I have a part-time assistant who also
14 works as a subcontractor.

15 MR. HEARON: Is that a person
16 trained as a lawyer?

17 MR. KOZOLCHYK: No, no, no, no.

18 MR. HEARON: So initial -- the
19 initial inquiries may not even go to you,
20 they may go to Phoebe or this other third
21 party, they may conduct the initial
22 inquiry? Is it possible that after the
23 initial inquiry, they don't even get to
24 you?

25 MR. KOZOLCHYK: Their criteria is

1 not the same as mine on whether to
2 escalate to me.

3 MR. HEARON: Mr. Kozolchyk, let's
4 try with my question.

5 I call in, Phoebe or this other
6 person talks to me, is it possible that
7 they will interview me and then they will
8 not pass along my name to you?

9 MR. KOZOLCHYK: Yes.

10 May I expand on that answer, please?

11 MR. HEARON: Wait a second. I just
12 want to understand the process first and
13 then you can expand on it.

14 So they do the initial inquiry and
15 after the initial inquiry, they can
16 decide that it's not worthy of being
17 passed on to you and so you never deal
18 with it?

19 MR. KOZOLCHYK: Yes.

20 MR. HEARON: If they think it's
21 something that merits your attention, is
22 that because they think there may be a
23 claim there more than the last paycheck?

24 MR. KOZOLCHYK: No.

25 MR. HEARON: Okay. You can go ahead

1 and explain it.

2 MR. KOZOLCHYK: We get calls from
3 people who are not owed wages. We get
4 calls -- I've gotten a call for someone
5 looking for a divorce attorney.
6 Sometimes -- quite often, people are
7 terminated and it could be for a
8 completely unjust and false reason, but
9 not a reason that is legally actionable.

10 MR. HEARON: I'm really only
11 focusing on the last paycheck cases that
12 you say you don't take anymore.

13 MR. KOZOLCHYK: Most of those cases
14 go to me to assess further, because if
15 they are owed some money, there is a
16 significant probability that they are
17 owed more money, so I evaluate that.

18 MR. HEARON: So every -- let's not
19 say every. But almost every case that's
20 a last paycheck case, even if it's
21 screened by somebody, it will eventually
22 get to you and then you will conduct your
23 phone conversation that lasts between
24 five and 30 minutes, yes?

25 MR. KOZOLCHYK: Or scheduled for an

1 appointment, usually that's the case, one
2 or the other.

3 MR. HEARON: So it's possible that
4 these folks may actually come in to your
5 office and you will have a lengthy
6 discussion and after all of your inquiry,
7 it's still a last paycheck case?

8 MR. KOZOLCHYK: Yes.

9 MR. HEARON: And then you shuffle
10 them off to somebody else? That's a bad
11 expression. I apologize for that. You
12 refer them to other sources of legal
13 assistance?

14 MR. KOZOLCHYK: Yes. I want to make
15 sure that they don't -- they are not
16 missing out on a more substantial claim
17 than I will be able to help them with.
18 If someone has a case that I could help
19 them with, I don't want to turn them
20 away.

21 MR. HEARON: I'm already passed
22 that. You have already determined that
23 they don't have a more serious claim and
24 then you refer them to someone else to
25 handle their last paycheck.

1 MR. KOZOLCHYK: Yes, that's correct
2 and I get about approximately four calls
3 a month to that effect.

4 MR. HEARON: Okay.

5 MR. KOZOLCHYK: Where I decline -- I
6 decline about four cases a month.

7 MR. HEARON: And you never take
8 these cases out on a pro bono basis?

9 MR. KOZOLCHYK: I would not be able
10 to put in the kind of time. Because
11 again, there's two parts to this.

12 There's the assessment of the only
13 thing there, it's an unpaid check case,
14 but then if I was going to then proceed
15 and move forward with the case, I will
16 need to still to do an extensive, a far
17 more extensive interview, to identify the
18 defendant, to identify the relationship,
19 including the individuals, to ensure the
20 coverage under the statute, to ensure
21 there are no applicable exemptions and
22 there's no employee, independent
23 contractor issue. I still would need to
24 calculate their claim myself and some
25 fact patterns are very difficult to

1 calculate. Getting to that next level,
2 okay, I'm going to take your case, even
3 though I have identified it as the last
4 paycheck, it still requires a far more in
5 depth interview that I could not afford
6 to do and certainly not afford to do it
7 on average four times a month. That's
8 like 48 cases a year.

9 MR. HEARON: All right. But if the
10 committee wanted to recommend that you do
11 a certain number of pro bono cases on
12 last paycheck cases, would you be able to
13 do that?

14 MR. KOZOLCHYK: Certainly.

15 MR. HEARON: How many do you think
16 your practice would be able to handle
17 without it being a burden on your
18 practice?

19 MR. KOZOLCHYK: May I ask for
20 clarification?

21 MR. HEARON: Sure.

22 MR. KOZOLCHYK: Are you suggesting I
23 file these cases in federal court?
24 Because that's where my practice, my
25 system, everything is built. That's

1 why -- my practice is built on the
2 practice of federal court. And even if I
3 was doing this on a pro bono basis, I
4 don't think the judges would appreciate
5 me bringing small dollar amounts in their
6 court, which is one of the reasons why I
7 have admitted to not bringing these
8 cases, so I don't bring them in federal
9 court.

10 MR. HEARON: I don't think -- I
11 think Mr. Lopez was trying to make that
12 point in his questioning. I don't know
13 that the judges were upset that you
14 brought last paycheck cases. It appears
15 that the referral is based upon a belief
16 that you were overcharging or delaying
17 the conclusion of these cases in order to
18 increase your fees. I don't think -- I
19 mean, again, as Mr. Lopez pointed out,
20 this is a federal statute and it is
21 designed to give the voiceless a voice in
22 trying to collect money from their
23 employers that they may rightfully be
24 entitled to. And I don't think that
25 there's any belief and I don't think

1 anybody in the committee is trying to say
2 that these cases should not be brought.
3 And I don't think that the referral says
4 that the cases shouldn't be brought. The
5 only question I asked you is if the
6 committee made a recommendation that you
7 should handle some of these last paycheck
8 cases on a pro bono basis, A, whether you
9 would be willing to do it and B, how many
10 would your practice do without it
11 becoming unduly burdensome?

12 MR. KOZOLCHYK: To answer your first
13 question, I will certainly do it and be
14 able to do it, if that's what the
15 committee required on a pro bono basis.
16 This may not be the proper forum to ask
17 this question, but if I did it on a pro
18 bono basis, would the costs be
19 reimbursable through a pro bono --
20 through some pro bono program or would I
21 be out of pocket these costs?

22 MR. HEARON: Let's assume for
23 purposes of the discussion that the cost
24 would be recoverable, being that you
25 weren't doing it on a totally pro bono

1 basis, but you were donating your legal
2 time as opposed to paying the costs.
3 Assuming that the court awarded the
4 costs.

5 MR. KOZOLCHYK: I could certainly do
6 that. How many, I hazard to guess. I
7 don't know what the number would be. I
8 would aim to please the committee.

9 MR. HEARON: Okay. You realize, of
10 course, that ultimately we only make a
11 recommendation to the court. We do not
12 have the power to impose anything on you.
13 It's entirely up to the judiciary to do
14 it. I'm just trying to get a feel for
15 what you can do and not do.

16 I have only a couple of other
17 things. Number one, at the very early
18 part of your testimony you referred to a
19 relatively new paperless order. Do you
20 remember that reference?

21 MR. KOZOLCHYK: Yes.

22 MR. HEARON: Can you provide me with
23 a copy of that paperless order that you
24 referred to? Not now. You can do it
25 tomorrow, because I have a couple of

1 other things also. I also would like you
2 to provide us with copies of the cases
3 that you say you tried, not copies, but
4 the case numbers of the four cases that
5 you tried in 2022, and you offered to
6 provide a recording, I forget if it was a
7 hearing or a deposition. I would also
8 ask that you provide that as well.

9 Is that okay with you?

10 MR. KOZOLCHYK: Yes. And the cases
11 I tried in 2022, I tried four. I won
12 three. I did lose one.

13 MR. HEARON: Okay. I just wanted to
14 know the case numbers. Okay.

15 MR. KOZOLCHYK: Sure.

16 MR. HEARON: I have no further
17 questions unless any members of the
18 committee have any follow-up, we are
19 through, Mr. Kozolchyk, and thank you
20 very much for coming in.

21 MR. KOZOLCHYK: Thank you very much
22 for the time of the committee. It's very
23 important to me and my family that I
24 maintain the ability to practice. Thank
25 you so much for the consideration. I'm

1 really open to many, many options that
2 the committee may come up with and I
3 would do pro bono work on the last
4 paychecks if that's what the committee
5 wanted me to do.

6 MR. HEARON: Okay. You may sign off
7 and, Ms. Court Reporter, you may also
8 sign off. Thank you.

9 (Thereupon, the proceedings was
10 concluded at 6:20 p.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA :
: SS.
COUNTY OF MIAMI-DADE :

I, MARIA ISABEL SALUM, Registered Professional Reporter, do hereby certify that I reported in shorthand the proceedings in the above-styled cause before the Ad Hoc Committee, at the time and place as set forth; that the foregoing pages, numbered from 1 to 118, inclusive, constitute a true and correct record.

I further certify that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

WITNESS my hand and Official Seal in the City of Miami, County of Miami-Dade, this 13th day of July, 2022.


MARIA ISABEL SALUM



Maria I. Salum, P.A.

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August 17, 2022

Via Email Only

The Honorable Cecilia M. Altonaga
Chief Judge, United States District Court SDFL
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue, Room 13-3
Miami, Florida 33128

In Re: Elliot Ari Kozolchyk (Fla. Bar #74791)
Case No. 20-MC-21879
Final Report and Recommendation

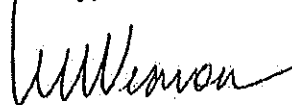
Dear Judge Altonaga:

Attached please find the Final Report and Recommendation of the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") regarding the referral of Elliot Ari Kozolchyk to the Committee.

By copy of this letter to Mr. Kozolchyk, he is directed to Rule 6 © (2) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys with respect to the Committee's findings and Final Report and Recommendation.

Should Your Honor have any questions regarding the foregoing or the attached or should you need the Committee to be of further service with regard to this matter, please do not hesitate to contact me.

Sincerely,



William C. Hearon, *Chair*
*Ad Hoc Committee on Attorney Admissions, Peer
Review and Attorney Grievance*

WCH/mm
Enclosure
cc: Clerk's Office
Elliot Ari Kozolchyk, Esq.

THE FLORIDA BAR'S
EXHIBIT

3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-MC-21879

IN RE;

ELLIOT ARI KOZOLCHYK
Florida Bar # 74791

FINAL REPORT AND RECOMMENDATION

THE AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW, AND
ATTORNEY GRIEVANCE FOR THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA¹

THIS MATTER was referred to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the “Committee”) by then-Chief Judge K. Michael Moore at the request of Judge Donald M. Middlebrooks and Judge Robin L. Rosenberg by letter dated July 17, 2019 (the “Letter of Referral”), to investigate the conduct of Elliot Ari Kozolchyk, Esq. in multiple cases filed in the U.S. District Court for the Southern District of Florida and to conduct disciplinary proceedings. On May 10, 2022, Chief Judge Cecilia M. Altonaga granted the Committee’s second request for an extension of time until September 7, 2022, to consider the matter and submit its final report and recommendation to the Court.

An Investigative Committee was appointed to investigate this matter pursuant to Rule 6(c)(2) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys.

¹ Mr. Kozolchyk was served on August 15, 2022 with the Committee’s Proposed Report and Recommendation, and in the forwarding email informed of his rights under Rule 6 of The Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys in the Southern District. On August 16, 2022 Mr. Kozolchyk submitted his Response to the Proposed Report and Recommendation. The Committee considered the matters raised by Mr. Kozolchyk’s Response, and they are addressed in the Recommendation section, *infra*.

The Investigative Committee also met with Mr. Kozolchyk for an informal discussion, which took place on June 27, 2022. Mr. Kozolchyk had previously submitted a written Personal Statement of Elliot Kozolchyk in Response to Letter of Referral to Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Statement") and, during a video-conference hearing held on June 28, 2022, ^{Transcript?} gave testimony in the form of a statement and responses to questions posed by Committee members.² Mr. Kozolchyk has been represented by an attorney during portions, but not the entirety, of these proceedings. He appeared before the Committee without counsel.

REPORT

I. MR. KOZOLCHYK'S BACKGROUND AND PRACTICE

Mr. Kozolchyk is the sole practitioner at his law firm, Koz Law, P.A. He was admitted to the Florida Bar in 2009 and worked at two small firms before opening his solo practice in 2012.

Mr. Kozolchyk's practice is dedicated almost exclusively to representing plaintiffs bringing claims against employers for unpaid wages and overtime pay under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* The FLSA allows plaintiffs to recover reasonable attorney's fees and costs, *see id.* § 216(b), but when an FLSA case is settled, the entire settlement agreement, including attorney's fees and costs, is subject to court approval. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). As the Letter of Referral notes, "[t]he Eleventh Circuit has stated that judicial review of attorney's fees, in particular, is mandated by the FLSA 'to assure both that counsel is compensated adequately and that no conflict of interest taints the amount the wronged employee recovers under a settlement agreement.'" (Ltr. of Referral 1 (quoting *Silva v. Manuel*, 307 F. App'x 349, 351 (11th Cir. 2009))). At the time of the June 28,

² References to Mr. Kozolchyk's testimony shall be cited as "Transcript at ____."

2022 hearing conducted in this disciplinary matter, Mr. Kozolchyk estimated that he currently had about 20 cases pending in this District.

During the time that some of the misconduct that is the subject of these proceedings took place, Mr. Kozolchyk was going through some very difficult personal circumstances, what he describes as “the worst period of [his] life”: on April 2, 2019, his fiancée and firm manager, who had for years been battling cancer, passed away unexpectedly five days before their planned wedding. (Stmt. 7). During this period, when he had an active case load of about 30 to 50 federal cases at any given time, he also received the Letter of Referral and was sanctioned \$30,000.00 in the *Olguin* case, discussed below. Mr. Kozolchyk testified that “[t]he stress of [his] personal life and [his] professional life was overwhelming.” (Transcript at pp. 5-6). He continues to financially support the young-adult biological children of his deceased fiancée as if they were his own children, and they are all financially dependent on his firm for their living expenses.

II. MR. KOZOLCHYK’S MISCONDUCT

The Letter of Referral identifies and analyzes various incidents of misconduct by Mr. Kozolchyk in cases in this District. Below, the Committee summarizes those incidents and the statements Mr. Kozolchyk has provided with respect to those incidents.

A. Realizing Financial Benefit From Improper Delay In Litigation

The Letter of Referral identifies five instances when it appeared Mr. Kozolchyk “continued litigating cases after the defendant has offered or sent his client the full value of their claim,” and “Mr. Kozolchyk then continues to generate unnecessary work . . . so that he can later request attorney’s fees for the additional time spent.” (Ltr. of Referral 8). Under Rule 4-3.2 of the Florida Rules of Professional Conduct, “A lawyer shall make reasonable efforts to expedite litigation

consistent with the interests of the client.” The Comment to this Rule explains that “[r]ealizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.”

***Shuman v. Treatment Partners of America*, Case No. 18-81609-Middlebrooks/Brannon.** Two weeks after the case was initiated, the defendant sent the plaintiff a check for the wages she claimed, but the case dragged on because the parties disputed Mr. Kozolchyk’s attorney’s fees. (Ltr. of Referral 2). Moreover, by the time of calendar call, part of the fees Mr. Kozolchyk sought were for preparing a motion in limine that was entirely unnecessary because (1) the plaintiff had already received her wages and (2) the defendant agreed to the relief sought in the motion. (*Id.*). In his Statement, Mr. Kozolchyk “acknowledge[s] that [he] should have tried to settle the case sooner.” (Stmt. 2).

***Soto v. Audiology Distribution LLC*, No. 19-CV-80339-Rosenberg/Reinhart.** Soon after the case was filed, the defendant delivered settlement checks for the full amount the plaintiff sought, and the parties agreed to settlement terms. (Ltr. of Referral 4). Nevertheless, according to the Letter of Referral, “Mr. Kozolchyk took the position that there was no settlement agreement between the parties because the defendant refused to agree that it would not seek sanctions against Mr. Kozolchyk *personally*.” (*Id.*). In his Statement, Mr. Kozolchyk denies that he took this position (Stmt. 9), but otherwise, after recounting in the detail the difficult settlement negotiations that took place (*id.* at 7–9), Mr. Kozolchyk “acknowledge[s] that [he] could have done things differently” and that he “could have been more flexible in [his] settlement offers” (*id.* at 9). He explains that he has learned lessons from this case and that he “will incorporate these lessons into [his] conduct moving forward and try to avoid events like this from repeating in the future.” (*Id.* at 9–10).

Nelson v. Kobi Karp Architecture & Interior Design, Inc., Case No. 17-23600-CIV-Seitz/McAliley. At the beginning of the case, Mr. Kozolchyk accepted checks for the full amount of his client's claimed damages but refused to settle because he thought he deserved a greater amount in attorney's fees than the defendant was willing to pay. (Ltr. of Referral 5). When Mr. Kozolchyk eventually moved for thousands of dollars more in attorney's fees than the defendant had offered to pay, Judge Seitz denied his motion, finding that Mr. Kozolchyk's sole intent in litigating the case after receiving his client's checks "was to run up his bill." (*Id.* at 5-6). In his Statement, Mr. Kozolchyk explains in detail why he took that position but also acknowledges that the position was "wrong" and "that a 'proportionate' fee may require a reasonable fee to be less than the time required to complete a case." (Stmt. 16). He also states that, due to the financial difficulties that cases of low monetary value create for him, he no longer brings claims "of value similar to *Nelson* in federal court." (*Id.*).

Batista v. South Florida Women's Health Association, Inc., Case No. 18-61075-CIV-Moreno/Seltzer. After the complaint was filed, it came to light that the employer had already mailed the plaintiff a check for the lost wages she sought but that, for whatever reason, she never received the check. (Ltr. of Referral 6). The employer offered to send her a new check, but Mr. Kozolchyk refused to settle without payment of his attorney's fees. (*Id.*). As the Letter of Referral explains, "Judge Seltzer recommended that the plaintiff's request for \$10,675 of attorney's fees be denied because '[t]his was a prototypical 'nuisance suit' for which an award of fees would be unreasonable and unjust.'" (*Id.*). In his Statement, Mr. Kozolchyk asserts that the plaintiff's initial failure to be paid by the employer was not merely a mistake, as the employer had claimed, but rather a result of the employer's "explicit refusal" to pay, which necessitated Mr. Kozolchyk's

assistance. (Stmt. 17). Nevertheless, just as he states with respect to the *Nelson* case, Mr. Kozolchyk says he “no longer bring[s] cases of this value in federal court.” (*Id.*).

Olguin v. Florida's Ultimate Heavy Hauling, Case No. 17-61756-CIV-Cooke/Goodman. In this case, the plaintiff claimed his employer owed him lost wages, but the reality was that the plaintiff had simply failed to retrieve from his employer the paycheck that accounted for those lost wages, “and neither the plaintiff nor Mr. Kozolchyk inquired into those wages before filing the lawsuit.” (Ltr. of Referral 6–7). Ultimately, Judge Goodman issued a Report and Recommendation recommending that the district judge deny the attorney’s fees Mr. Kozolchyk sought, finding that Mr. Kozolchyk “appeared to be far-more interested in generating attorney’s fees for himself than in resolving a modest claim for his client’s benefit,” and that “[h]is actions strongly suggest a strategy of avoiding an early resolution in order to generate more fees.” (*Id.*). In his Statement, Mr. Kozolchyk explains in greater detail the circumstances that led to the plaintiff not getting paid his lost wages, including the fact that the payment was originally made by direct deposit but then reversed. (Stmt. 19). He also points out that the employer normally paid the plaintiff by direct deposit and that the employer had never advised the plaintiff that the check with some of the wages at issue was available for him to collect. (*Id.*).

B. Failure to Respect Rights of Third Persons

The Letter of Referral identifies three instances when Mr. Kozolchyk engaged in disrespectful conduct toward third persons involved in the litigation. Rule 4-4.4, entitled “Respect for Rights of Third Persons,” provides: “In representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.”

Mendez v. Model Row, Inc., No. 17-CV-81104-Rosenberg/Hopkins. In this case, the parties reached a settlement in principle but could not finalize it, and so Judge Rosenberg held a hearing. (Ltr. of Referral 4). At the hearing, when the parties were ready to have the terms of the settlement read into the record, the defendant informed the Court that he didn't have the funds to make the payment. (*Id.*). The plaintiff agreed that he could make monthly payments, but Mr. Kozolchyk refused to accept monthly payments. (*Id.*). The defendant advised that he would therefore have to make the payments by credit card, at which point Mr. Kozolchyk stated that his fee demand would increase by three percent. (*Id.*). Upon hearing that, the defendant began to weep in open court but agreed because he had no other alternative. (*Id.* at 4–5). In his Statement, Mr. Kozolchyk states that he declined to accept monthly payments from the defendant because he had bad experiences with monthly payments in past cases with the defendant, and Mr. Kozolchyk notes that he routinely agrees to monthly payments when he has no reason to believe the defendant will default. (Stmt. 11). Mr. Kozolchyk also states that he imposed the additional three percent because his firm does not have the ability to accept credit card payments and the payment service he would use for that mode of payment charges three percent. (*Id.*). Nevertheless, Mr. Kozolchyk states that, “if [he] had to do it over again, [he] would not have charged the extra 3%.”

Hernandez-Sabillon v. Naturally Delicious, Inc., No. 15-CV-80812-Rosenberg/Brannon. In this case, Mr. Kozolchyk attempted to make his own audio recording of a deposition over opposing counsel's objection. (Ltr. of Referral 5). The ensuing argument resulted in both attorneys placing separate phone calls to Judge Brannon's chambers that escalated into loud, heated, and unprofessional interactions. (*Id.*). Judge Brannon sanctioned Mr. Kozolchyk for this conduct in addition to his general behavior in discovery by requiring him to serve at a local soup kitchen. (*Id.*). In his Statement, Mr. Kozolchyk writes that he was not aware at the time that

recording the deposition was improper, that he is embarrassed by the incident, and that “it will never happen again.” (Stmt. 11–12).

Salvador v. Brico, LLC, No. 17-CV-61508-Rosenberg/Seltzer. Judge Rosenberg had to order Mr. Kozolchyk and his opposing counsel to cease their personal attacks, which they had been leveling against each other in court filings. (Ltr. of Referral 5). Despite Judge Rosenberg’s censure, Mr. Kozolchyk continued to attack opposing counsel in his court filings. (*Id.*). In his Statement, Mr. Kozolchyk apologizes, acknowledges that his attacks on opposing counsel were unprofessional, and asserts that the way he drafts communications and filings today is different than it was back when he was litigating this case. (Stmt. 12). Mr. Kozolchyk states: “Today, I try to keep my filings and communications dispassionate, factual, and singularly focused on the relevant issues. When I am attacked by opposing counsel, I focus on the facts and do not reciprocate or engage.” (*Id.*).

C. Frivolous Argument

The Letter of Referral identifies two instances when Mr. Kozolchyk presented a frivolous argument to the Court. Under Rule 4-3.1, “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”

The first instance was in *Shuman* (citation *supra*). By the time of calendar call, the plaintiff had already been paid all wages she claimed she was owed, and the only remaining issue was whether the parties had reached a settlement agreement for the plaintiff’s attorney’s fees and costs. (Ltr. of Referral 2). The parties agreed that defendants would pay Mr. Kozolchyk \$2,500.00 in exchange for dismissal of the case without prejudice. (*Id.*). Defendants believed this constituted a

settlement agreement, which would be subject to judicial review under the FLSA, but Mr. Kozolchyk argued to the Court that the agreement was not a settlement agreement because the dismissal would have been without prejudice. (*Id.*). The Court found Mr. Kozolchyk's argument disingenuous and an attempt to evade judicial review. (*Id.*). The Letter of Referral also finds that the argument was "nonsensical and a violation of Mr. Kozolchyk's duty of candor towards the Court," as well as "self-serving." (*Id.*). In his Statement, Mr. Kozolchyk explains the cases upon which he relied to support his theory "that FLSA cases that are dismissed without prejudice are not subject to judicial review." (Stmt. 4–6). Nevertheless, Mr. Kozolchyk acknowledges that he was "wrong" and that he "ha[s] since changed [his] approach because of this case." (*Id.* at 6). Specifically, he will "cast a broad net over what circumstances constitute a settlement subject to judicial review, and request from the courts guidance on whether they will exercise judicial review over FLSA cases that are being dismissed without prejudice." (*Id.*).

The second instance of frivolous argument was in *Salvador* (citation *supra*). The Letter of Referral states that, after a settlement agreement had been reached, "Mr. Kozolchyk took the position that there was no settlement agreement because defendant expressed its intention to appeal any fee award to Mr. Kozolchyk." (Ltr. of Referral 5). In his Statement, however, Mr. Kozolchyk writes that was not his position and that his "position was that there was a settlement and that it did not include confidentiality or a right to appeal the Court's determination of liquidated damages, attorney's fees, and costs." (Stmt. 12–13). In addition, the Letter of Referral states, "Judge Brannon concluded that Mr. Kozolchyk's position . . . was without support and Judge Brannon also described Mr. Kozolchyk's behavior as vexatious." (Ltr. of Referral 5). In his Statement, Mr. Kozolchyk asserts that Judge Brannon did not find that his position was "without support" but rather that his interpretation was "inaccurate." (Stmt. 13). Mr. Kozolchyk also asserts that Judge

Brannon did not describe his behavior as vexatious but rather “warned [Kozolchyk] that any further litigation on the terms of the settlement agreement would border on vexatious” (*id.* (quoting Judge Brannon’s R&R; emphasis supplied by Mr. Kozolchyk)).

D. Breach of Duty of Candor to the Tribunal

Under Rule 4-3.3, a lawyer owes a duty of candor to the tribunal. The Letter of Referral identifies two instances in *Olguin* (citation *supra*) in which “Mr. Kozolchyk appears to have made misrepresentations to the Court.” (Ltr. of Referral 7). In his Statement, Mr. Kozolchyk explains the circumstances of those instances in extensive detail and explains why he did not make misrepresentations to the Court. (Stmt. 19–27). Nevertheless, the Letter of Referral remarks that, although the Court did not explicitly find Mr. Kozolchyk’s statements to be untrue, the Court’s “skepticism of those statements is striking,” and “[a]t the very least, it shows that Mr. Kozolchyk is comporting himself in a manner that has led multiple judges to distrust his honesty and candor toward the court.” (Ltr. of Referral 9).

As for *Shuman* (citation *supra*), the Letter of Referral finds that Mr. Kozolchyk’s position that no settlement had been reached was not only a frivolous legal argument but also a misrepresentation of fact: “Mr. Kozolchyk presented the Court a self-serving and false account of the facts and circumstances of the case.” (Ltr. of Referral 9). The Letter of Referral finds false Mr. Kozolchyk’s representation “that the parties had not reached a settlement agreement that would require the Court’s scrutiny” because “[i]t defied logic to label the exchange of money for the dismissal of a lawsuit as anything but a settlement agreement.” (*Id.*). And it finds his misrepresentation self-serving because his client had already been paid her claimed damages and thus all that was at issue was Mr. Kozolchyk’s fees. (*Id.*). In his Statement, Mr. Kozolchyk explains that the view he took of Judge Dimitrouleas’s order was based on a misunderstanding of the law,

and Mr. Kozolchyk acknowledges that he was wrong and insists that he was “*not trying to evade Court approval.*” (Stmt. 5–6 (emphasis in original)).

E. False Statements to Third Persons

Under Rule 4-4.1, “In the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person.” In *Shuman* (citation *supra*), during the negotiation of the settlement agreement, Mr. Kozolchyk represented to opposing counsel that Judge Dimitrouleas allowed dismissals without prejudice without judicial review. (Ltr. of Referral 3). It turns out that Mr. Kozolchyk was relying on a standard order Judge Dimitrouleas issues in FLSA cases but was blatantly misrepresenting the contents of that order. (*Id.* at 3–4). As stated in the Letter of Referral, “[w]hile a lawyer does not have a duty to inform opposing counsel of all relevant facts, Mr. Kozolchyk’s misleading explanation of Judge Dimitrouleas’s order is equivalent to an affirmative false statement because it caused his opposing counsel to attempt to dismiss an FLSA case without judicial review, in contravention of the law in this Circuit.” (*Id.*). The Letter of Referral further finds that “[i]t strains credulity to argue that Mr. Kozolchyk merely misunderstood the clear directions in Judge Dimitrouleas’s order, and it appears that these maneuvers were aimed at evading judicial scrutiny of the settlement agreement and his attorney’s fees.” (*Id.* at 9). In his Statement, Mr. Kozolchyk explains that the view he took of Judge Dimitrouleas’s order was based on a misunderstanding of the law, and Mr. Kozolchyk acknowledges that he was wrong and insists that he was “*not trying to evade Court approval.*” (Stmt. 5–6 (emphasis in original)).

III. CONCLUSION

The Letter of Referral's conclusion that Mr. Kozolchyk "litigates in the interest of his own fees rather than his client's best interest, which in turn leads to various acts of misconduct in an effort to obtain the greatest fee award possible" (Ltr. of Referral 8) is well-founded with respect to the incidents described above. There is little doubt that, on almost all of the occasions described above, Mr. Kozolchyk violated the above-mentioned Rules of Professional Conduct, with the exception of the suspected misrepresentation to the Court in *Olguin* which, upon closer inspection, appears not to have been a misrepresentation. Unquestionably, Mr. Kozolchyk's misconduct and bad-faith litigation tactics interfered with the Court's administration of justice and wasted the time and resources of the Court, his opposing counsel, the defendants his clients sued, his clients, and even Mr. Kozolchyk himself.

Nevertheless, although the Court has not yet disciplined Mr. Kozolchyk, the disciplinary process seems to have had significant remedial effects on Mr. Kozolchyk's attitude and behavior. Mr. Kozolchyk's Statement and the testimony he gave during his hearing before the Committee show that he accepts responsibility for his actions, that he is sincerely remorseful for the harm he has caused, and that he has been genuinely committed to improving his conduct. According to Mr. Kozolchyk, he has done much self-reflection and has also received counseling from the attorney who helped him at various points during these disciplinary proceedings. It is also notable that Mr. Kozolchyk's practice of law appears to be far less contentious than it used to be. (*See, e.g.* Transcript at pp. 5-9).

The Committee has taken note of the self-improvement Mr. Kozolchyk has demonstrated and believes that, with the right support system, Mr. Kozolchyk can become the better attorney he has said he wants to be. That said, the Committee also acknowledges that the Letter of Referral

appears to have been the impetus for Mr. Kozolchyk's change and that, without the pressure exerted by the disciplinary process, there is an evident risk Mr. Kozolchyk may revert back to his old ways.

Accordingly, the Committee makes the following recommendation of discipline, which is designed to assist Mr. Kozolchyk in his rehabilitation and empower him to become a more professional, ethical, and productive attorney.

RECOMMENDATION

The Committee recommends that Mr. Kozolchyk be ordered to comply with the following requirements:³

1. Take two CLE courses within 60 days of entry of the order by the Court as follows:
(1) Episodes 1 through 4 of the "Your Honor Series," hosted by Paul Lipton, and (2) at least 2 hours on federal court practice; and provide an affidavit to the Committee attesting to timely completion of the CLE.
2. For a period of 12 months from entry of the order by the Court, self-report to the Committee within 72 business hours⁴ of the entry of any order or court filing by opposing counsel⁵ alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk.

³ It should be noted that a minority of the Committee members suggested other, more significant remedial measures. Those additional measures were not accepted by the majority, but some or all of those suggested measures may become appropriate if Mr. Kozolchyk fails to comply with the above recommendations or suffers a re-lapse in his behavior.

⁴ In the Proposed R&R the Committee had suggested 48 business hours and in his Response Mr. Kozolchyk suggested 72 business hours. The Committee accepted his suggestion.

⁵ In his Response, Mr. Kozolchyk suggested removing the phrase "or court filing by opposing counsel." The Committee considered his suggestion, but rejected it. Mr. Kozolchyk is concerned that his "cases are often contentious and [that he has] no control over what opposing counsel write in their filings." The purpose of the remedial measures outlined above is to monitor Mr. Kozolchyk's behavior in his cases and to avoid the situation where his behavior rises to the level of the Court entering orders as detailed in Section II. One such filing by an opposing

3. Prepare and deliver within 30 days from entry of the order by the Court letters of apology to the following members of the Court: Judges Moore, Middlebrooks, Dimitrouleas, Rosenberg, Seitz, Moreno, Seltzer, Goodman, and Strauss; and provide a copy of each letter to the Committee.

4. Enroll within 60 days from entry of the order by the Court in counseling for anger management for a minimum of 25 hours, with the course to be approved in advance by the Committee.

Dated August 17, 2022

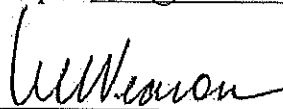
Respectfully submitted,



William C. Hearon, Esq.
Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2022, a true and correct copy of the foregoing was served via e-mail to Elliot Ari Kozolchyk, Esq. at ekoz@kozlawfirm.com.



William C. Hearon, Esq.

counsel may be insignificant, but more numerous filings by opposing counsel may indicate to the Committee and the Court that Mr. Kozolchyk's previous *modus operandi* of contentiousness has returned.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN RE:
ELLIOT KOZOLCHYK

PERSONAL STATEMENT OF ELLIOT KOZOLCHYK
IN RESPONSE TO LETTER OF REFERRAL TO AD HOC COMMITTEE ON
ATTORNEY ADMISSIONS, PEER REVIEW AND ATTORNEY GRIEVANCE

Please accept this submission in response to the July 17, 2019, letter of referral ("Letter of Referral") to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the "Committee"). In the nearly two years since I was referred to the Committee, hardly a day has gone by when I do not think and worry about the referral and the allegations by two federal judges and what I did that got me into trouble. As a relatively young, solo practitioner (at the time of the referral I had been an attorney for nine years), I was overwhelmed with fear that my practice and my livelihood were at stake. The silver lining was that, over the last two years, I was forced to look inside and figure out how I got here, and how, if I am allowed to continue practicing in Federal Court, I can be the lawyer I need to be.

INTRODUCTION

First things first. I accept responsibility for the problems I caused. I sincerely apologize for what I did and what I did not do that led to the referral. Through introspection and regular counseling from my attorney, over the last twenty-four months, I have gained a great deal of insight that I promise to apply going forward.

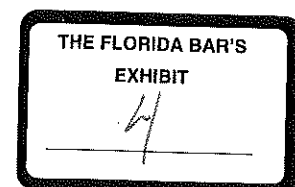
I entered law school immediately after college and graduated in 2009. I started my first job as an attorney in December 2009 working with a solo practitioner in the areas of Wage & Hour and Social Security Disability. In the second half of 2011, I left that firm and worked at another firm practicing Wage & Hour law before starting my firm in 2012.

My firm focuses on helping employees recover their unpaid wages. Over the years, I have handled more than 700 cases involving claims for unpaid wages and estimate that I have helped more than 1,000 people obtain the wages that they are owed.

I live with and take care of two teens ages 17 and 19 that are the biological children of my deceased fiancé. My firm is our sole source of income, and we are financially dependent on it to live. I play piano and compose music. Here are excerpts from my piece, "Hurting Right Hand":
<https://www.dropbox.com/sh/jju9z6lbbt2elch/AAAjO3NGje21SlJyp-2i5itRa?dl=0>.

ADDRESSING EACH OF THE MATTERS REFERENCED IN THE REFERRAL

Below I provide relevant details in each of the eight (8) cases mentioned in the Letter of Referral that will hopefully help you, the Committee, put my conduct in context, and provide insight into my thought process at the time of my actions.

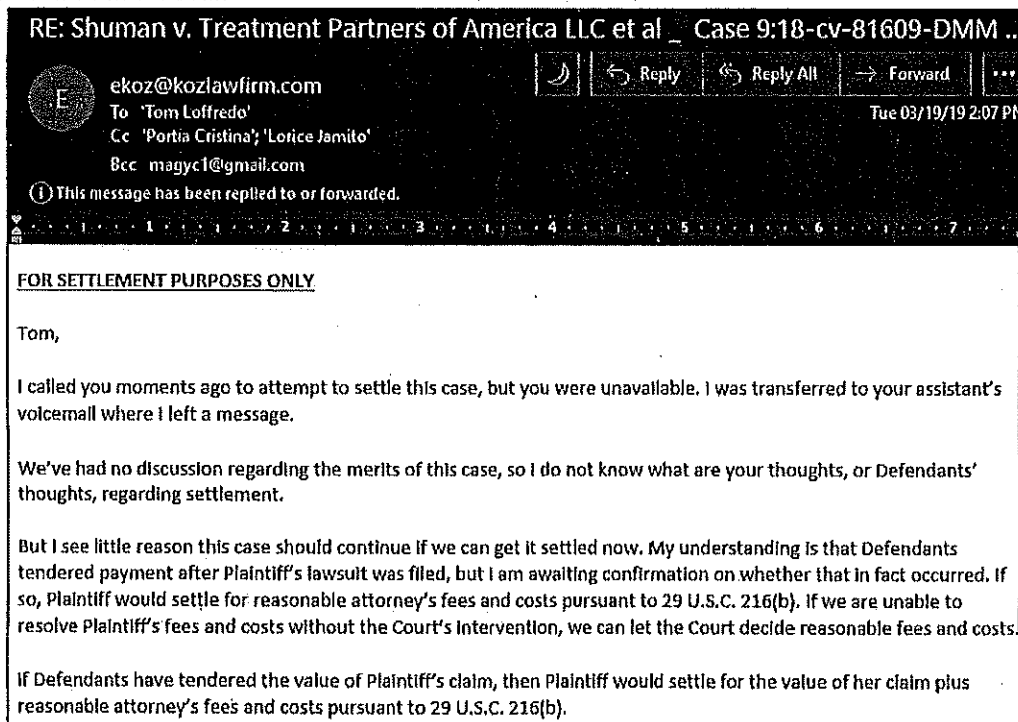


1. *Shuman v. Treatment Partners of America LLC et al., Case No. 18-cv-81609*

Plaintiff Felicia Shuman (“Shuman”) worked for the defendants as a behavioral health technician and was not paid for the last two weeks of her employment. On November 25, 2018, I filed Shuman’s Complaint. On December 6, 2018, Scott Frankel (“Frankel”) was served. On December 13, 2018, after Frankel was served, Defendants tendered a check directly to Shuman and not to me.¹ At calendar call, Defendants’ counsel incorrectly asserted that “the plaintiff received a payroll check from the employer for \$1075.12 on November 9th, 2018” and that “she was paid in the normal course by her company through a payroll check.”² Defendants did not tender payment until after Shuman’s Complaint was filed and Frankel was served. Payment on December 13—41 days after her last day of employment on November 2, 2018—was not payment in the normal course of Shuman’s employment.

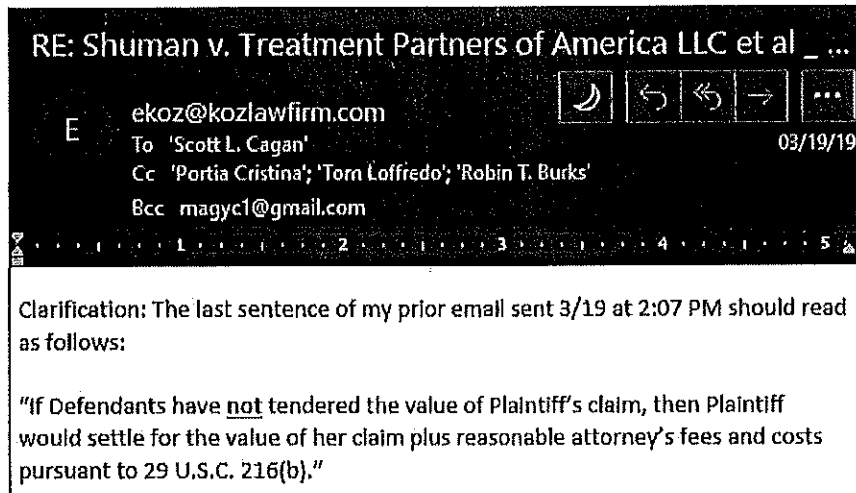
On March 19, 2019, I initiated efforts to try to settle the case. Before my March 19 email, Defendants’ counsel had not tried to settle the case. While the onus to settle a case is the responsibility of both parties and does not lie solely with the plaintiff, *I acknowledge that I should have tried to settle the case sooner*. Fortunately, my delay did not prejudice anyone since I was not actively generating attorney’s fees in the case other than filing a motion in limine in accordance with the applicable deadline.

My March 19, 2019, settlement offer agreed to confer in good faith to resolve Shuman’s reasonable attorney’s fees and costs pursuant to 29 U.S.C. §216(b), and agreed to let the Court determine reasonable fees and costs:

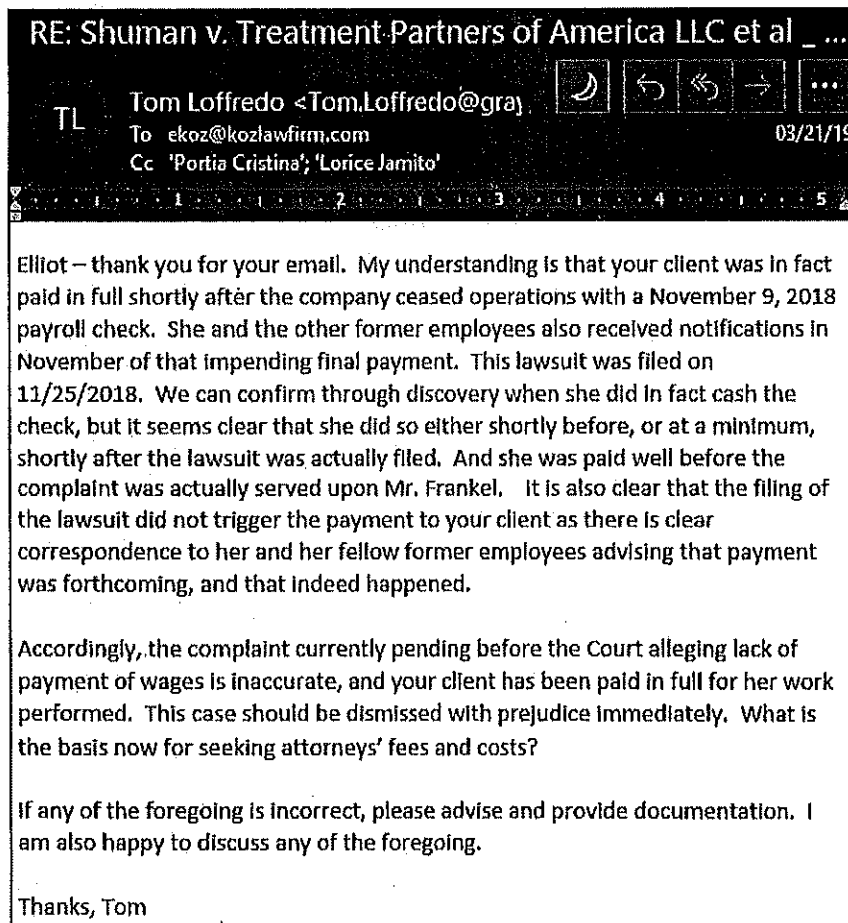


¹ “Plaintiff received and accepted payment of alleged unpaid wages by payroll check on or about December 13, 2018.” Defendants’ Motion to Enforce and Approve FLSA Settlement, ECF No. 29, p. 1. The amount Defendants tendered was \$1,075.12—\$212.88 less than the value of Plaintiff’s claim.

² *Shuman Transcript* at 3:6-8, 3:11-12.



Defendants' counsel's response opposed Shuman's entitlement to fees and costs, demanded that the case be dismissed with prejudice immediately, and asserted various incorrect statements of facts regarding the timing of payment and representations to Shuman regarding payment.



Thus, this was not a situation where I was demanding unreasonable fees or otherwise preventing the case from resolving. I readily consented to letting the Court determine Shuman's reasonable

fees and costs. The initial issue was Defendants declining to agree to pay any fees and costs and, instead, demanding that Shuman's claims be dismissed.

The Eleventh Circuit has held that it does not "authoriz[e] the denial of attorney's fees, requested by an employee, solely because an employer tendered the full amount of back pay owing to an employee, prior to the time a jury has returned its verdict, or the trial court has entered judgment on the merits of the claim." *Dionne v. Floormasters Enters., Inc.*, 667 F.3d 1199, 1206 n. 6 (11th Cir.2012). Accordingly, Defendants' counsel's position on March 21, 2019, that Defendants were not responsible for paying attorney's fees and costs because it previously tendered Shuman a check was incorrect.

I filed Shuman's motion in limine pursuant to the applicable deadlines in the case because the case had not settled and Shuman's claims were not moot. The Eleventh Circuit has held that tendering a check for the value of the claim does not moot the claim if not accompanied by an offer of judgment. *Wolff v. Royal Am. Mgmt., Inc.*, 545 F. App'x 791, 794 (11th Cir. 2013).

In May 2019, the parties agreed to resolve Shuman's fees and costs for \$2,500. This amount represented a substantial compromise to the fees and costs I had actually incurred, but I agreed to it to avoid further litigation. The parties agreed that Shuman's claims would be dismissed without prejudice, there would be no written agreement, and Shuman would not receive any additional compensation beyond what she received previously on December 13, 2018. The lack of a written agreement was for two reasons: First, because Shuman was not receiving any additional compensation beyond what she already received six months earlier in December 2018, there was no benefit or consideration for her to agree and contractually obligate herself to any nonmonetary terms. *Second, I thought—in retrospect, erroneously—that avoiding the task of reviewing and finalizing a written agreement would avoid further delay and avoid incurring additional unnecessary attorney's fees.* Thus, the decision to not have a written settlement agreement was because of the absence of consideration to Shuman and to save time and expense.

Because Shuman's claims were being dismissed without prejudice, I believed the dismissal was not subject to the Court's review and approval under *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). I relied on the following authority, which holds that FLSA claims that are dismissed without prejudice are not subject to judicial review under *Lynn's Food Stores, Inc.*:

- *Kerr v. Powerplay Arcade, Inc.*, No. 6:07-CV-1441-ORL-19KRS, 2007 WL 3307091, at *1 (M.D. Fla. Nov. 6, 2007) (concluding that where "case is being dismissed without prejudice, there will be no final adjudication on the merits" and no settlement or resolution of FLSA claims for the court to review for fairness).
- *Perez-Nunez v. North Broward Hosp. Dist.*, 609 F.Supp.2d 1319, 1320-1321 (2009) ("If the dismissal sought by the Parties were without prejudice, the Court would agree that approval would not be necessary, since Plaintiff would not be foreclosing her ability to vindicate any FLSA claim she may have by refiled at a later time.") (citing *Kerr*).
- ("[N]either the alleged fraud by Defendant nor the alleged fraud by Scott deprived the Plaintiff of his day in court on his FLSA claim, since the claim was dismissed without prejudice, which did not foreclose Plaintiff's ability to vindicate any remaining FLSA claim he may have had"... "[T]here is no public policy requiring court scrutiny of the

circumstances surrounding dismissal without prejudice of a FLSA case.”) (citing *Perez-Nunez* and *Kerr*).

- *Appleby v. Hickman Const., Inc.*, 2013 WL 1197758 at *1 (2013) (“Where the parties stipulate to dismissal without prejudice, the plaintiff is not foreclosed from refileing any FLSA claim at a later time, and thus, such a stipulated dismissal remains self executing without contravening the FLSA. See *Perez-Nunez v. N. Broward Hosp. Dist.*, 609 F.Supp.2d 1319, 1320–21 (S.D.Fla.2009). But, the FLSA’s requirements regarding the compromise of an FLSA claim in the context of a suit brought by an employee dictate that where the parties seek dismissal of an FLSA claim with prejudice, the court must be satisfied that any compromise of FLSA rights is fair and reasonable.”)
- *Lopez v. Hayes Robertson Group, Inc.*, 2015 WL 9462968 at *2 (2015)(“If dismissal of an FLSA claim is sought with prejudice, then the dismissal would “preclude plaintiff from re-filing her FLSA claim, [and] it cannot be granted without [the] Court’s approval.”) (quoting *Perez-Nunez* and citing *Bleecher* and *Kerr*).

More recent authority, *Defaite v. Phoenix Complete Auto Care Inc. et al.*, Case No. 19-62518-Smith, ECF No. 21 (S.D. Fla. Jan. 28, 2020), holds the same:

This is an FLSA case. See ECF No. 1. Because the case is being dismissed without prejudice, there is no final adjudication on the merits, and no settlement or resolution of FLSA claims for the Court to review for fairness. See *Perez-Nunez v. N. Broward Hosp. Dist.*, 609 F. Supp. 2d 1319, 1321 (S.D. Fla. 2009); *Kerr v. Powerplay Arcade, Inc.*, No. 6:07-CV-1441-ORL19KR, 2007 WL 3307091, at *1 (M.D. Fla. Nov. 6, 2007).

I also believed in good faith that the May 2019 resolution of this case was not a settlement because: (1) Shuman’s claims were being dismissed without prejudice, (2) Defendants previously tendered unconditionally a check to Shuman six months earlier on December 13, 2018, without any agreement to settle, (3) Shuman was not receiving any additional compensation in May 2019, and (4) there was no written agreement. Additionally, because I believed there was no settlement, I thought the circumstances fit the kind of situation described in the second paragraph below from a standard order Judge Dimitrouleas enters in FLSA cases:

[A]ny voluntary dismissal or stipulation of dismissal will require the parties to submit a settlement agreement for judicial review and approval. Further, the Court finds that in order to effectuate the Eleventh Circuit’s requirement dictated by *Lynn’s Food*, even dismissals without prejudice require the Court to review any settlement agreement that has been reached by the parties. See *Lynn’s Food*, 679 F.2d at 1352 (“Congress made the FLSA’s provisions mandatory; thus, the provisions are not subject to negotiation or bargaining between employers and employees.”).

The Court recognizes that there may be situations in which the plaintiff chooses to voluntarily dismiss the case, even if there has been no settlement or compromise.

(1) In that event, the court will require the notice of voluntary dismissal to affirmatively state that (a) no settlement agreement has been reached, *and* (b) the plaintiff has voluntarily chosen to abandon the FLSA claims at this time.

(2) The Court will construe such a dismissal to be without prejudice, regardless of the language used in the notice. Plaintiff will be able to re-file or otherwise pursue the claim in the future, subject to the statute of limitations.

Smith v. Intercoastal Air, LLC et al, Case 17-cv-61510-Dimitrouleas, ECF No. 4, p. 2 (emphasis added).

Because I thought that the circumstances under which this case was being dismissed did not constitute a settlement, I believed that the second paragraph above applied. *I was wrong and acknowledge that the circumstances under which this case was resolved could be considered a settlement. I was not trying to evade Court approval—I believed that the way this case was being resolved did not meet the definition of a settlement.*

At no point did I deny or conceal from the Court the facts and circumstances regarding the resolution of this case. In three separate filings before calendar call, I informed the Court that I would be receiving payment for fees and costs and that Shuman's claims would be dismissed without prejudice.³ At no point did I hide from the Court the amount of fees and costs that I was receiving. Nor do I believe that the \$2,500 for fees and costs was unreasonable or would not be approved by the Court under *Lynn's Food Stores, Inc.*

I have since changed my approach because of this case. In *Defaite v. Phoenix Complete Auto Care Inc. et al.*, Case No. 19-62518-Smith, the plaintiff reached an agreement with the defendants where the plaintiff would dismiss the case in exchange for the defendants reemploying him. To avoid any possibility that the Court might construe this disposition as a settlement, or my conduct as attempting to avoid judicial review, I explained the circumstances in Plaintiff's Unopposed Motion to Dismiss [ECF No. 20]. The Court granted the motion and held that there was no settlement and that the dismissal was not subject to judicial review: "Because the case is being dismissed without prejudice, there is no final adjudication on the merits, and no settlement or resolution of FLSA claims for the Court to review for fairness." *Id.* at ECF No. 21.

Like courts' holdings in *Defaite*, *Perez-Nunez*, *Lopez*, *Bleacher*, and *Appleby*, I believed in *Shuman* that, because the case was being dismissed without prejudice, there was no final adjudication on the merits and no settlement or resolution of FLSA claims for the Court to review for fairness.

The lesson I learned from this experience, as shown in Defaite, is to err on the side of caution, cast a broad net over what circumstances constitute a settlement subject to judicial review, and request from the courts guidance on whether they will exercise judicial review over FLSA cases that are being dismissed without prejudice.

³ See Notice [ECF No. 27], Response to Order [ECF No. 31], and Stipulation of Dismissal without Prejudice [ECF No. 34].

2. *Soto Aldana v. Audiology Distribution LLC, Case No. 19-cv-80339*

This case took place during the worst period of my life. I filed Plaintiff's Complaint on March 11, 2019, and Defendant was served on March 14, 2019. On April 2, 2019, my fiancé and firm manager passed away unexpectedly five days before our planned wedding. One day later, on April 3, Defendant's counsel requested a 15-day extension of time to respond to Plaintiff's Complaint. I responded that same day informing her of my fiancé's passing and agreeing to the 15-day extension.

On April 17, 2019, Defendant's counsel communicated Defendant's first settlement offer: Defendant agreed to pay the full value of Plaintiff's claim (\$4,532.81) plus \$1,000.00 total to resolve both Plaintiff's counsel's fees and costs. Defendant's settlement offer was unreasonable because on that date, my total fees were \$2,360.00 and costs were \$441.00.

That same day, I communicated Plaintiff's first settlement offer:

1. Defendant will pay Plaintiff \$4,532.81.
2. Additionally, Defendant will pay Plaintiff's reasonable fees and costs.
3. Once we have an enforceable settlement, I will confer with you in good faith to resolve Plaintiff's fees and costs without the Court's intervention. If we are unable to resolve Plaintiff's fees and costs amicably, I'll seek the Court's determination of Plaintiff's reasonable fees and costs.
4. Dismissal with prejudice conditioned on the Court's retention of jurisdiction to enforce this settlement and award Plaintiff's reasonable attorney's fees and costs.
5. In the event that enforcement of this settlement is sought, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Regarding attorney's fees and costs, this offer followed the language of FLSA's statute, 29 U.S.C. § 216(b): "The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

This offer was my attempt to get the case settled immediately without any disagreements between the parties or their counsel regarding attorney's fees and costs standing in the way of a settlement. This offer allowed the parties to resolve Plaintiff's underlying claim immediately, confer on attorney's fees and costs to try to resolve them amicably and without court intervention, and if the parties could not resolve Plaintiff's fees and costs without court intervention, consent to the Court determining Plaintiff's reasonable fees and costs rather than hold up the entire settlement. The offer did not obligate Defendant to pay any more than what was required by the statute. I made this offer five (5) separate times: on April 17, May 3, May 6, May 17 and May 21. Each time, Defendant did not accept the offer and continued litigating the case.

On April 19, while my original April 17 settlement offer was still open, Defendant moved to dismiss Plaintiff's Complaint for not filing a statement of claim pursuant to a court order that required it to be filed by April 12, 2019.⁴ I missed the deadline because my fiancé passed away.

⁴ The statement of claim was previously filed as an exhibit to Plaintiff's Complaint.

Defendant's counsel knew at the time she filed the motion to dismiss that my fiancé passed away. Defendant's counsel did not confer with me about the oversight before filing the motion. Defendant's counsel had an open offer from me at the time to settle for the value of Plaintiff's claim plus reasonable fees and costs to be determined through conferral or by the Court. Defendant's counsel caused more attorney's fees to be incurred by moving to dismiss Plaintiff's case to try to avoid paying any attorney's fees and costs rather than agree to pay reasonable fees and costs.

On May 1, 2019, Defendant's counsel communicated Defendant's second settlement offer: Defendant agreed to pay the full value of Plaintiff's claim (\$4,532.81) plus \$2,000.00 total to resolve both Plaintiff's counsel's fees and costs. On that date, my total fees were \$7,680.00 and costs were \$441.00.

On May 22, 2019, Defendant's counsel sent a draft settlement agreement without stating whether Defendant agreed to Plaintiff's May 21 settlement offer. That first draft agreed to pay the full value of Plaintiff's claim (\$4,532.81). Additionally, the initial draft had the following language regarding fees and costs, which was acceptable to both Plaintiff and me:

ADL agrees to pay Plaintiff's reasonable attorney's fees and costs incurred in this action. Counsel for the Parties agree to confer in good faith to reach an agreement on the amount of Plaintiff's reasonable attorney's fees and costs without the need for Court intervention. If counsel for the Parties are unable to reach an amicable agreement on the amount of Plaintiff's reasonable attorney's fees and costs, the Parties agree to move for a determination of reasonable attorney's fees and cost by the Court.

First draft of settlement agreement.

This language regarding fees and costs mirrored the language in Plaintiff's settlement offers. That same day, I emailed back Plaintiff's revisions to the overall settlement agreement.

On June 14, 2019, Defendant's counsel emailed a revised settlement agreement. This third version completely removed any reference to Defendant agreeing to pay Plaintiff's reasonable fees and costs. Instead, Defendant's revised settlement agreement provided that the Court would determine and award attorney's fees and costs to either party:

The Parties have agreed to settle Plaintiff's claim for unpaid overtime wages, excluding any entitlement to an award to attorney's fees or costs. Liability for and any amount of attorney's fees and costs remain before the Court, including any right to appeal the Court's order on any such motion(s).

Third draft of settlement agreement.

Both my client and I did not believe it was reasonable to agree to a settlement term that left ambiguous whether Defendant would pay Plaintiff's fees and costs and that allowed Defendant to

seek attorney's fees and costs against Plaintiff or me. Plaintiff and I had always sought to settle the case with payment of Plaintiff's reasonable fees and costs as mandated by the FLSA, 29 U.S.C. § 216(b).

The Letter of Referral at p. 4 describes the events above as follows:

The parties agreed to settlement terms as the terms applied to Mr. Kozolchyk's client. Rather than deliver the settlement checks to his client, however, Mr. Kozolchyk took the position that there was no settlement agreement between the parties because the defendant refused to agree that it would not seek sanctions against Mr. Kozolchyk *personally*.

I did not take the position that "there was no settlement agreement between the parties because the defendant refused to agree that it would not seek sanctions against Mr. Kozolchyk *personally*."

Defendant's first draft of the settlement agreement provided for payment of Plaintiff's reasonable fees and costs—either as agreed to by the parties or as determined by the Court. This was acceptable to both Plaintiff and me. After I returned the second draft with Plaintiff's revisions, Defendant's revised third draft of the settlement completely rewrote that provision to challenge Plaintiff's entitlement to fees and costs and left open that either side may seek attorney's fees and costs against the other. Both my client and I did not believe it was reasonable to agree to a settlement term that allowed Defendant to seek attorney's fees and costs against Plaintiff or me.

Upon receipt of Defendant's revisions to the settlement agreement, in order to prevent the settlement from falling apart and the litigation from protracting further, I sought the Court's intervention in two ways: (1) I filed Notice of Filing Emails and Defendant's Newly-Revised Settlement Agreement [ECF No. 34] where I explained to the Court what happened, and (2) I filed Plaintiff's Motion for Telephonic Status Conference [ECF No. 35]. On June 19, 2019, Magistrate Judge Bruce E. Reinhart conducted the telephonic status conference. During the status conference, Defendant's counsel and I agreed that the settlement agreement would be silent as to attorney's fees and costs. While I did not believe it was reasonable to have the settlement agreement be silent as to Plaintiff's attorney's fees and costs, and that is not the way FLSA settlement agreements are normally written, I did not want the case to be protracted any further and this was the only way that Defendant would agree to settle and not continue litigating the case.

This case was very painful for me—both at the time these events were unfolding, and today as I have had to relive them to write this section. This case could have settled April 17 when the parties each exchanged their first settlement offers if Defendant accepted Plaintiff's offer, which included agreeing to confer on Plaintiff's reasonable fees and costs and letting the Court determine reasonable fees and costs if the parties could not agree without the Court's intervention. *But I acknowledge that I could have done things differently. I could have been more flexible in my settlement offers. Although not requested, I could have provided my billing records when Defendant's counsel expressed Defendant's willingness to settle Plaintiff's underlying claim. I could have negotiated my attorney's fees and costs before the parties agreed to a settlement. These are lessons I have learned from this case recently as a consequence of my intense*

reflection while writing this response. I will incorporate these lessons into my conduct moving forward and try to avoid events like this from repeating in the future.

3. **Mendez v. Model Row Inc. et al., Case No. 17-cv-81104**

Defendants, Model Row Inc. and Robert Born (collectively "Model Row"), operate a landscaping business. Plaintiff Gonzalo Guillermo Mendez ("Mendez") worked for Model Row as a landscaper and was not paid overtime wages as required by the FLSA. Overtime violations are prolific among landscaping companies. *See, e.g.,* South Florida Landscaping Company to Pay \$110,602 in Back Wages To 85 Employees After U.S. Department of Labor Finds Overtime Violations, U.S. Dept. of Labor, <https://www.dol.gov/newsroom/releases/whd/whd20200817> (last visited Jun 1, 2021).

I represented four employees of Model Row because they all retained me for similar claims relating to Model Row's failure to pay proper overtime wages. The lawsuits were separate because each plaintiff came to me at different times. It is not uncommon for an employer to follow the same improper pay practices for multiple employees thereby causing multiple employees to have similar claims.

On October 1, 2017, I filed Mendez's Complaint for unpaid overtime wages and liquidated damages totaling \$14,679.88. On February 18, 2018, Model Row served an offer of judgment under Fed. R. Civ. P. 68. On March 5, 2018, on behalf of Mendez, I accepted Model Row's offer of judgment.

The terms of Model Row's offer of judgment were as follows:

1. Defendants to pay to Plaintiff \$7,339.94, less proper and applicable deductions and withholdings, representing alleged unpaid overtime wages, per DE 10.
2. Defendants to pay to Plaintiff \$7,339.94, representing alleged liquidated damages, per DE 10.
3. Defendants to pay to Plaintiff's counsel \$2,142.00, representing payment in full of costs and attorneys' fees through January 14, 2018, per DE 10.
4. Defendants to pay to Plaintiff's counsel additional and reasonable costs, expenses and attorneys' fees, as agreed to by the parties or, in the event the parties cannot agree, as determined by the Court.
5. Acceptance of this offer is conditioned upon the parties execution of a mutually acceptable settlement agreement and releases, as well as the Court's approval of the settlement agreement.
6. Acceptance of this offer is conditioned upon all parties bearing their own costs, expenses and attorneys' fees, except as specifically stated herein.
7. Acceptance of this offer is conditioned upon dismissal with prejudice of this action.

ECF No. 17-1.

After the offer of judgment was accepted, Model Row surprised Mendez with a twenty-four (24) month payment plan of \$500 per month. A payment plan was never mentioned in the offer of judgment nor otherwise bargained for or discussed before Mendez accepted Model Row's offer of

judgment. Mendez, therefore, directed me to oppose Model Row's new requirement that Mendez wait two (2) years to be fully paid.

When the Court later required the parties to attend a status conference, Mendez capitulated under the pressure of the courtroom and accepted Model Row's new requirement that Mendez wait two years to be fully paid solely to end continued litigation. Mendez's decision would ultimately prove to be a bad one: Months later, Mendez succumbed to cancer and passed away. Model Row promptly ceased making payments thereby leaving Mendez's widow in a terrible position.

I declined to accept monthly payments for my fees and costs in this case because in prior settlements with these same Defendants, I did accept monthly payments and those were bad experiences: Defendants missed monthly payments several times and their counsel was uncooperative during my subsequent conferrals, which were necessitated by Defendants missing payments. Based on those prior bad experiences, I declined to agree to a payment plan for my fees and costs in this case. When I have no reason to believe that a defendant will default on payment, I routinely agree to receive payment of my fees and costs on a monthly basis.

Regarding the extra three percent because of a credit card, my firm does not have the ability to accept credit card payments. The only way I could accept credit cards as a payment is to request a favor from a colleague at a separate law firm to run the transaction through his firm's payment processor. My colleague charges me three percent to do this.⁵ I would have preferred Model Row pay without using a credit card, but that was the only way Model Row would agree to pay me other than a lengthy payment plan.

Rather than decline Model Row's requirement that the form of payment be through a credit card, I instead advised Model Row that it would require me to incur an additional three percent cost that they would need to pay. I explained this to Defendants and they understood it. Defendants still decided to proceed with a credit card payment rather than pay through some other means. I would have accepted some other form of payment without that additional three percent charge that credit card payments require me to incur.

When I advised Model Row that I could not accept credit card payments without an additional three percent charge, Model Row began weeping. At the time I believed Model Row's reaction was intended to gain sympathy from the Court. But, as I write this, upon reflection, I cannot say my initial reaction was correct. Although my sympathies were with Mendez, his widow, and the multiple employees Model Row failed to pay their proper wages, if I had to do it over again, I would not have charged the extra 3%.

4. *Hernandez-Sabillon v. Naturally Delicious, Inc., Case No. 15-cv-80812*

I attempted to independently record the audio for the deposition. I believed it was prudent to do so based on Defendants' counsel's previous conduct in the case. *I was unaware at the time that doing so was improper.* I did not conceal the fact that I was independently recording the audio of the deposition. The event that immediately preceded me calling Judge Brannon's chambers was that

⁵ Not that it is exactly the same situation, but under recently amended Florida Bar Rule 4-1.5(h), lawyers are permitted to pass through to their clients the cost of a credit card charge.

Defendants' counsel physically grabbed my cable connecting my microphone to my laptop, and violently yanked my cable out of my laptop's socket, which risked damaging both my cable and my laptop. Defendants' counsel then rolled up my cable around my microphone and refused to return the microphone, which was my property, back to me. Judge Brannon sanctioned both sides. *Recalling this incident embarrasses me. Simply stated, it will never happen again.*

5. Salvador v. Brico, LLC et al., Case No. 17-cv-61508⁶

I acknowledge that I attacked defendants' counsel in this case. Clearly, that was unprofessional. I am sorry. The way I draft my communications and filings today is different from the way I did in 2017 and 2018 when this case was litigated. Today, I try to keep my filings and communications dispassionate, factual, and singularly focused on the relevant issues. When I am attacked by opposing counsel, I focus on the facts and do not reciprocate or engage. This change is the direct result of the Letter of Referral, intense self-reflection, and counseling from my attorney, David Rothman. I am not perfect and this is an ongoing process, but where I am today is very different from where I was at that time.

At the time, I wrongfully justified my conduct as an appropriate reaction to the regular attacks by defendants' counsel. Even a basic motion for enlargement of time that I filed at one point in the case was met with an excoriating response from defendants' counsel. Now, through a different lens, looking back at my tit-for-tat response to defendant's counsel I realize my reaction only made matters worse. *I no longer react in kind; I strive always to take the high road.*

The plaintiff worked as a car appraiser for a car buying business and filed suit for \$12,284.29 in unpaid overtime wages and liquidated damages. The defendants' primary defense was that the plaintiff was exempt from overtime as an outside salesperson. The defendants tenaciously litigated that defense all the way to summary judgment where the Court ruled in the plaintiff's favor and against the defendants. After losing on summary judgment, the defendants moved to stay the case and certify the Court's decision on summary judgment for interlocutory appeal, which the Court denied. At a subsequent status conference, the Court described the inapplicability of the exemption as not a "close call."

The parties then attended a settlement conference with Judge Brannon where the case settled and the terms were stated on the record. After the settlement conference, while the parties were exchanging drafts of the written settlement agreement, the defendants attempted to force the plaintiff to agree to settlement terms that were not previously agreed to at the settlement conference: The defendants required a confidentiality provision even though the Court's Order [ECF No. 4] made clear that "confidentiality provisions are, at best, strongly disfavored in the settlement of FLSA claims." Defendants' counsel also took the position that the defendants did not actually agree to "pay" the liquidated damages, costs, or attorney's fees, and that they intended to reserve their right to appeal the Court's determination of liquidated damages, attorney's fees, and costs.

I respectfully disagree that I took "the position that there was no settlement agreement because defendant expressed its intention to appeal any fee award to Mr. Kozolchyk." Letter of Referral at

⁶ The same attorney representing the defendants in this case represented the defendants in the *Model Row* case.

p. 5. My position was that there was a settlement and that it did not include confidentiality or a right to appeal the Court's determination of liquidated damages, attorney's fees, and costs. I sought to enforce the parties' settlement by filing the plaintiff's Motion to Enforce Settlement [ECF No. 99].

Judge Brannon's subsequent Report and Recommendation [ECF No. 106] ("R&R") recommended that Defendants' Motion for Status Conference [ECF No. 98] be denied and the plaintiff's Motion to Enforce Settlement [ECF No. 99] be granted, in part, and denied, in part. The R&R reads in part:

Plaintiff filed the instant Motion, seeking entry of an order enforcing the terms of the parties' settlement agreement as stated on the record at the conclusion of the settlement conference. **Plaintiff's description of the terms of the settlement agreement in paragraph 4 of his Motion is correct.** However, in addition to those terms listed by Plaintiff, the parties agreed to the following basic terms: mutual general release, neutral reference, no rehire, and that the Court retain jurisdiction to enforce the terms of the settlement. DE 104 at 9-10. **Plaintiff is also correct that the parties did not agree to include a confidentiality provision in the settlement agreement.** However, Plaintiff's counsel's interpretation that a full settlement was reached which cannot be appealed is inaccurate. That was not a term of the partial settlement agreement reached. The issues of **liquidated damages and attorney's fees and costs** remain before the District Court, with a right to appeal.

R&R at pp. 1-2 (emphasis added).

Based on my legal research, which I included on pages 3 and 4 of the plaintiff's Motion to Enforce Settlement [ECF No. 99], I believed and argued that the defendants' consent to the Court determining liquidated damages, attorney's fees, and costs without reserving their right to appeal that determination waived their right to appeal that determination. I accept the Court's decision to the contrary. My argument regarding the appeal was intended to stop the defendants from prolonging the case further by preventing them from continuing to litigate the plaintiff's claims (liquidated damages, fees, and costs) on appeal.

Judge Brannon's R&R did not conclude that my argument that the defendants waived their right to appeal liquidated damages, fees, and costs was "without support." Letter of Referral at p. 5. The R&R concluded, "Plaintiff's counsel's interpretation that a full settlement was reached which cannot be appealed is inaccurate." *Id.* at 2. I accept that.

Judge Brannon did not describe my behavior as vexatious. The R&R reads, "[T]he Court warned Plaintiff's counsel that any further litigation on the terms of the settlement agreement would border on vexatious." *Id.* at 2 (emphasis added). There was no further litigation on the terms of the settlement agreement. Judge Brannon was speculating about future litigation that never happened and was not currently before him. The primary cause for Plaintiff's Motion to Enforce Settlement

[ECF No. 99] was the defendants' attempting to compel confidentiality, a term which the parties never agreed to as part of the settlement and which contravened the Court's Order [ECF No. 4]. The Court ruled in the plaintiff's favor on that issue and against the defendants so that would not seem to be vexatious litigation on behalf of the plaintiff.

I apologize for my interactions with the defendants' counsel. I no longer engage opposing counsels when they attack me personally and professionally in communications and filings. I keep my communications dispassionate, factual, and focused on the relevant issues. This case was not prolonged due to my attorney's fees. The defendants litigated this case to summary judgment based on a defense that the Court denied on summary judgment and described as not a "close call." After the parties agreed to a settlement, I did not take the position that there was no settlement. In contrast, when the parties disagreed on certain terms, I moved to enforce the settlement which the Court granted in part.

6. *Nelson v. Kobi Karp Architecture & Interior Design, Inc. et al.,*
Case No. 17-cv-23600

This case, and several others mentioned in the Letter of Referral, pertain to unpaid last paychecks. I regularly receive calls from people whose employers refuse to pay their final paychecks.⁷ In virtually every FLSA case I file, I attach as an exhibit to the first filing in the case (the Complaint), a Statement of Claim ("SOC"). The SOC itemizes the claim with relevant information, including date ranges, hours worked, rates of pay, and a calculation of the exact amount of wages owed. Some courts require that the plaintiff file a SOC in a subsequent filing in the case, but I voluntarily include the SOC at the very outset of the case. I do this so that the defendants know upfront the claim value and can take immediate action to settle the case if they desire to do so. In cases involving last paychecks, I also regularly include in my settlement offers the option to let courts determine my reasonable attorney's fees. I believed that early disclosure of the claim value combined with agreeing to let the court resolve any disagreements concerning reasonable fees and costs removed any obstacle to early resolution and any reason for protracted litigation.

Plaintiff Gabriella Emily Nelson ("Nelson") worked as a receptionist for Defendants, an interior design business. On March 16-17, 2017, Nelson worked her last two days, which Defendants refused to pay. Two months later, on May 17, 2017, Nelson was still asking Defendants for her last paycheck:

⁷ I no longer bring cases of this value in federal court. While I continue to believe that employers should not be permitted to refuse to pay their employees their last paycheck, I have come to realize that filing these smaller FLSA claims in Federal Court, where more substantial criminal and civil cases are typically litigated, may be viewed as a burden on scarce judicial resources. In addition, although I know that small FLSA cases matter to the individual employees, I now understand how the disparity between these claims and the resulting attorney's fees can impact my credibility with the courts which can translate into difficulties for my current and future clients.

Begin forwarded message:

From: gnels001@gmail.com
Date: May 17, 2017 at 3:28:45 PM EDT
To: jshedd@kobikarp.com
Subject: Last Paycheck

Hi Jon,
As requested March 16 and March 17 are my last days of work

Thank you
Emily

May 17, 2017, email from Nelson to Defendants requesting her last paycheck after a telephone call.

On October 1, 2017, 4.5 months after Nelson worked her last two days of work, she still had not been paid. I then filed suit for \$232 in unpaid minimum wages and liquidated damages. After the lawsuit was filed, Defendants tendered checks to Nelson and offered \$1,500 and then \$2,000 for attorney's fees and costs. These amounts would not have fully compensated me for the time required in the case including time finalizing the settlement and obtaining court approval.

I offered \$3,000 to settle my fees based on my time at the rate of \$350 per hour. In addition to the work and time already expended, settling and ending the case still required (1) drafting or reviewing, revising, conferring with Defendants' counsel on, and finalizing the parties' settlement agreement, (2) conferring with Nelson on the terms of the settlement agreement and explaining to Nelson the terms of the settlement agreement, (3) coordinating Nelson's execution and return of the settlement agreement, (4) drafting or reviewing, revising, conferring with Defendant's counsel, and finalizing the parties' joint motion to approve settlement, and (5) possibly repeating the process if the Court did not approve the parties' settlement agreement in its initial form. Defendants rejected the offer and the case did not settle until the settlement conference with the parties agreeing to let the Court determine fees and costs.

In *Munoz v. Kobi Karp Arch. & Interior*, 09-21273-CIV, 2010 WL 2243795, at *1 (S.D. Fla. May 13, 2010), report and recommendation adopted *sub nom. Munoz v. Kobi Karp Architecture & Interior Design, Inc.*, 09-21273-CIV, 2010 WL 2243798 (S.D. Fla. June 4, 2010), the same defendants as in *Nelson* once more failed to pay an employee's wages. In that case, the plaintiff's counsel offered to settle plaintiff's fees for \$3,500—\$500 more than the \$3,000 I offered to settle in *Nelson*. In that case, the plaintiff's counsel's \$3,500 offer was made when his total fees incurred totaled \$1,325—\$2,175 less than the fees he offered to bring the case to its conclusion. In *Munoz*, Defendants made similar arguments about the plaintiff's counsel "driving up" attorney's fees, which the Court rejected:

First, it is worth noting that Plaintiff's Counsel's billing records reflect that when the May 14, 2009, letter was sent to KKA from

Plaintiff's Counsel, a total of 3.00 hours had been spent on the case by Attorney Robert S. Norell and a total of 2.80 hours had been spent on the matter by Jon M. Kreger (DE # 27-2).² Therefore, at the time Plaintiff's Counsel forwarded the letter requesting \$3500.00 in attorney's fees to the Defendants, the Plaintiff's attorney's fees totaled \$1325.00, representing \$975.00 for Attorney Norell (3 hours x \$325.00/hr.) and \$350.00 for Jon M. Kreger (2.80 hours x \$125.00/hr.) Hence, Counsel for the Plaintiff initially requested that the Defendants settle the attorney's fee portion of the Plaintiff's claim for \$2175.00 more than the actual amount of attorney's fees that had been incurred at that point. As such, at first blush, the Defendants' argument that Plaintiff's Counsel merely "drove up" the attorney's fees instead of quickly settling this matter holds some appeal. However, upon closer review of the correspondence between the Parties and the Plaintiff's Counsel's time records, it appears that the Plaintiff's demand for \$3500.00 for attorney's fees may have represented the total amount of fees that Plaintiff's Counsel anticipated would be incurred by the time the entire matter was concluded.

Munoz v. Kobi Karp Arch. & Interior, 09-21273-CIV, 2010 WL 2243795, at *3 (S.D. Fla. May 13, 2010), report and recommendation adopted *sub nom. Munoz v. Kobi Karp Architecture & Interior Design, Inc.*, 09-21273-CIV, 2010 WL 2243798 (S.D. Fla. June 4, 2010).

As in *Munoz*, my initial offer of \$3,000 to settle attorney's fees (\$500 less than the \$3,500 demanded in *Munoz*) included conservatively the total amount I anticipated would be incurred by the time the entire matter was concluded. In *Munoz*, the court awarded \$4,540.00 in fees and costs.

In addition to *Nelson* and *Munoz*, Defendants have been sued for FLSA unpaid wage violations in *Gutierrez v. Kobi Karp Architecture & Interior Design, Inc.*, Case No. 17-cv-24637 (settled with \$1,000 in fees and costs) and *Cruz v. Kobi Karp Architecture & Interior Design Inc. et al*, Case No. 09-cv-61852 (settled with \$4,000 in fees and costs). I was not the plaintiff's attorney for any of these cases except *Nelson*.

As stated *supra*, I no longer bring claims of value similar to *Nelson* in federal court. I have learned that what courts consider a "proportionate" fee is not solely a function of the time required in a case multiplied by the hourly rate. If a claim is below a certain value, some courts interpret a "proportionate" fee to mean a fee for substantially less time than the time actually required to be incurred in a case. *I understand and acknowledge that under that view, I should have accepted Defendants' offer to resolve my fees for \$2,000. I believed at the time that the offer was not reasonable because it would not compensate me for all the time necessary to complete the case. I acknowledge that my belief is wrong and that a "proportionate" fee may require a reasonable fee to be less than the time required to complete a case.*

7. *Batista v. South Florida Woman's Health Associates, Inc. et al.*
Case No. 18-cv-61075

Like *Nelson*, and for the same reasons, I no longer bring cases of this value in federal court. As discussed more fully below and supported by the sworn Affidavit of Mitzy Batista [ECF No. 38-1], this case involved Defendants' explicit refusal to pay Batista's last paycheck and was not merely a "mistake" as Defendants claimed.

Defendants South Florida Woman's Health Associates, Inc. and Edward D. Eckert (collectively "SFWHA") provide medical services. ECF No. 1, p. 1, ¶ 4. Batista worked as a medical assistant on January 17, 2018. ECF No. 38-1, p. 1, ¶¶ 3-4. SFWHA refused to pay Batista's last paycheck. The facts alleged in the sworn Affidavit of Mitzy Batista [ECF No. 38-1] do not support the conclusion that, "as of twelve days after the complaint was filed, Plaintiff's counsel was aware that, at most, a mistake had occurred, which could easily be rectified."

On or about February 5, 2018, Defendant Eckert terminated Batista's employment because she missed a day of work. *Id.* at 1, ¶ 7. Batista missed a day of work because her nephew had a medical emergency involving a collapsed lung and Batista had to rush to the hospital to be with him. *Id.*

SFWHA failed to pay Batista's last paycheck via direct deposit. *Id.* at 2, ¶ 10. On or about Tuesday, February 6, 2018, Batista called SFWHA's office, spoke to the receptionist, and asked for her last paycheck. *Id.* at 2, ¶ 8. The receptionist transferred Batista to the SFWHA employee responsible for processing payroll. *Id.* Batista then asked for her last paycheck from the SFWHA employee responsible for processing payroll. *Id.* The SFWHA employee responsible for processing payroll put Batista on hold, and then returned to the telephone and said that Batista would be paid via direct deposit. *Id.*

On or about Friday, February 9, 2018, Batista called SFWHA's office again and spoke to the receptionist. *Id.* at ¶ 9. Batista again asked the receptionist when she would receive her last paycheck. *Id.* SFWHA's receptionist said that Defendant Eckert was not going to pay her. *Id.* Batista never received payment for her last paycheck via direct deposit or through any other means. *Id.* at 2, ¶ 10.

On May 13, 2018, Batista sued SFWHA for their failure to pay minimum wages in violation of the FLSA. ECF No.1. Batista claimed \$275.50 in unpaid minimum wages plus an equal amount as liquidated damages for a total claim of \$551.00. ECF No. 1-3.

On May 25, 2018, Defendant Eckert emailed me denying the allegations in Batista's Complaint. ECF No. 36-2. Defendant Eckert admitted that Batista had called asking for her last paycheck before her lawsuit was filed. *Id.* Defendant Eckert admitted that Batista had not been paid her last paycheck but characterized the non-payment as Batista "not cash[ing] the check." *Id.* Defendant Eckert's email did not make any offer to settle Batista's claims, nor communicate any desire to resolve Batista's claims amicably. *Id.* The email merely offered to send Batista's last paycheck. *Id.*

On June 13, 2018, attorney Ross S. Eckert emailed me on behalf of SFWHA communicating Defendant Eckert's admission that, "there was a miscommunication with the payment." ECF No.

36-3, p. 1. Attorney Eckert, on behalf of Defendant Eckert, admitted that Batista was never paid her last paycheck, but claimed Batista refused her paycheck: "Dr. Eckert says the check payment was offered, but it was not accepted." *Id.* Attorney Eckert claimed that the case can "be easily resolved," but acknowledged only Batista's claim for \$551.00. *Id.* Attorney Eckert did not acknowledge Batista's claim for attorney's fees or costs, nor make any settlement offer to resolve any of Batista's claims. *Id.*

Later, on June 13, 2018, Defendant Eckert emailed me offering to settle Batista's claims for the amount she is claiming plus costs, but refusing to pay Batista's attorney's fees: "She should in all fairness pay your fees out of her settlement." ECF No. 35-1, pp. 20-21.

On July 9, 2018, Eckert and I discussed settlement via a telephone call. This was the first telephone call the parties had regarding settlement. Defendants agreed to pay Batista's claim, but refused to pay any fees. I offered to resolve my fees for \$2,750, which Eckert rejected, and I then lowered the offer to \$2,000, which Eckert also rejected. Again, these offers were not solely to compensate for time incurred through the moment in the litigation when the offer was communicated but instead "the total amount of fees that Plaintiff's Counsel anticipated would be incurred by the time the entire matter was concluded." *Munoz* at *3. I did not believe fees of \$2,750 or \$2,000 were unreasonable when considering the time required to handle an FLSA case from start to finish.

During that same July 9, 2018, phone call, I also agreed to let the Court determine my reasonable fees. Eckert did not accept any settlement offer. I did not think that those offers were excessive. My additional offer to let the Court determine reasonable fees should have removed any possible disagreement over fees, but Defendants would not agree to pay fees. During the call, Eckert said, "I would rather pay a defense attorney \$10,000 than allow a court to determine fees and costs."

I respectfully deny that I "demanded around \$3,000 in attorney's fees to settle the matter and refused to settle for less." Letter of Referral at p. 6. My initial offer for fees in Batista was \$2,750 and then I reduced the offer to \$2,000. The Letter of Referral's citation to ECF No. 37 at 4 supports this: "the fee demand had been reduced from \$3,200² to \$2,000 n. 2: Plaintiff's counsel represents that his fee demand to settle the matter was not \$3,200, but \$2,750 (DE 28 at 5 n.3)." I also offered to let the Court determine reasonable fees.

On July 11, 2018, Defendant Eckert emailed the following settlement offer: SFWhA agreed to pay Batista's claim for wages (\$551), costs (\$523), and attorney's fees of \$1,100. ECF No. 18-1, p. 4. I did not believe the \$1,100 offer for fees was reasonable because it did not compensate all the time required to be incurred in the case.

In response, I emailed a settlement counteroffer that included the same monetary terms communicated on July 9, 2018: i.e., (1) payment of Batista's unpaid minimum wages and liquidated damages totaling \$551, (2) payment of Batista's costs totaling \$523, and (3) payment of reasonable attorney's fees as determined by the Court. ECF No. 18-1, p. 3. Later, on July 11, 2018, Defendant Eckert accepted the settlement offer in writing via email.

My only offers to resolve fees in this case were \$2,750, \$2,000, and to let the Court determine reasonable fees. I did not believe these offers were unreasonable given the time necessary to conclude FLSA cases including finalizing settlements and obtaining court approval. Defendants'

claim that their failure to pay Batista was an accident is controverted by the sworn Affidavit of Mitzy Batista [ECF No. 38-1]. Once again, based on what occurred in this case and other similarly sized cases, I am no longer bringing claims of this value in federal court.

8. *Olguin v. Florida's Ultimate Heavy Hauling LLC et al., Case No. 17-cv-61756*

Plaintiff Ricardo Jorge Olguin ("Olguin") was employed as a driver and laborer. Defendants Florida's Ultimate Heavy Hauling LLC d/b/a Florida's Ultimate Heavy Hauling & Rigging, Michael Cammarata ("MC"), and Amie Cammarata ("AC") operate a business which transports heavy equipment.

According to the sworn Affidavit of Ricardo Jorge Olguin [ECF No. 31-1] ("O. Aff."), the facts pertaining to Olguin's unpaid last paycheck are as follows: On or about August 24, 2017, Olguin returned Defendants' truck to their facility in Pompano Beach, Florida. Defendants MC and AC were present at the facility at that time. O. Aff. at p. 1, ¶ 3. Olguin dropped off Defendants' cell phone, fuel card, and headset. *Id.* Olguin voluntarily resigned from his employment with Defendants MC and AC at that time. *Id.* When Olguin resigned, MC told Olguin, "You're a piece of s***!" Olguin did not respond and left the facility in his personal car. *Id.*

During Olguin's employment, Defendants normally paid Olguin via direct deposit. *Id.* at p. 1, ¶ 5. On August 25, 2017, Olguin's bank account had a direct deposit payment reversed for the payroll period of about August 19, 2017 through August 25, 2017. *Id.*

After Defendants reversed the direct deposit, and before Olguin's lawsuit was filed, Defendants never paid Olguin any check or other compensation for the last payroll period of Olguin's employment; i.e., from about August 19, 2017 through about August 25, 2017. *Id.* at p. 2, ¶ 6. Defendants never communicated with Olguin, either directly or indirectly, that any check or other compensation was ready or available for the last payroll period of Olguin's employment. *Id.* at p. 2, ¶ 8. Defendants never communicated with Olguin, either directly or indirectly, that Olguin should go pick up any check or other compensation for the last payroll period of Olguin's employment. *Id.* at p. 2, ¶ 9. Defendants simply reversed the direct deposit payment for Olguin's last payroll period of employment and took no other action to compensate Olguin for that period before Olguin's lawsuit was filed. *Id.* at p. 2, ¶ 10.

On September 5, 2017, I filed suit for \$11,235.08 allocated as \$290.00 in unpaid minimum wages, \$5,327.54 in unpaid overtime wages, and \$5,617.54 in liquidated damages.

On September 26, 2017, Defendants' counsel initiated communication with me. That first communication did not discuss the merits of Olguin's claims, nor attempt to settle or reach an amicable resolution. Instead, Defendants' counsel's first communication was a "litigation hold" letter that ended with: "[P]lease confirm in writing that you have forwarded a copy of this letter to Olguin so I am not compelled to forward this letter to him directly." I was taken aback by the clearly inappropriate warning.

On October 11, 2017, one day after Defendants filed their answer to Olguin's Complaint, Defendants' counsel filed Defendants' Motion to Bar Direct Solicitation of Potential Plaintiffs [ECF No. 10] ("Motion to Bar") seeking sanctions against me and my disbarment. Two hours

before Defendants' Motion to Bar was filed, Defendants' counsel sent a "Declaration of Glenn Pryor" alleging that someone identifying himself as an attorney had solicited one of Defendants' former employees from a blocked phone number.⁸ Defendants' counsel and I then discussed Defendants' allegations during a phone call. I unequivocally denied making the alleged phone call or being involved in any way with the alleged communication. Defendants' counsel demanded that I produce my phone records. I declined. Less than two hours after the phone conversation, Defendants' counsel filed Defendants' Motion to Bar. During the May 24, 2018, evidentiary hearing, Defendants' counsel admitted that he "may have" had the motion already drafted before the telephone call with me even happened.⁹

Among other relief, Defendants' motion requested an evidentiary hearing, sanctions including an award of Defendants' attorney's fees and costs, and that I be disciplined pursuant to S.D. Fla. L.R. Rules Governing Discipline of Attorneys, which includes (1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorneys eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate.

During subsequent communications, Defendants' counsel rebuffed my requests for additional information: he claimed that he did not have the screenshot of Glenn Pryor's cell phone call log showing the alleged phone call, could not obtain the screenshot of Glenn Pryor's cell phone call log showing the alleged phone call, refused to produce the telephone records of Glenn Pryor showing the alleged telephone call, and claimed he did not have Glenn Pryor's telephone number.¹⁰

On October 26, 2017, Defendants sent a courier to my office. Defendants' counsel made no appointment, advance arrangements, nor gave prior notice that Defendants were making any sort of delivery. Neither I, nor anyone employed by my law firm, was in the office at the time of Defendants' surprise delivery. The receptionist in my office building is not an employee or subcontractor of my law firm.¹¹ The receptionist can receive deliveries but is not authorized to sign anything on behalf of me. The courier refused to deliver the package because the receptionist would not sign a document. Neither the receptionist nor I refused any delivery. Later that day, Defendants' counsel sent a letter claiming that I "refused" Defendants' paychecks to Olguin. At no point before, during, or immediately after the surprise delivery did Defendants communicate any desire or intention to settle Olguin's claims.¹²

⁸ During the subsequent evidentiary hearing held on May 24, 2018, before Magistrate Judge Goodman, Mr. Pryor contradicted his prior declaration and testified that the alleged caller did not say he was a lawyer, but instead the caller "had to be a lawyer" by "the way he was talking." ECF No. 86-3, ECF No. 86-3, *Hearing Transcript* at 19:20-20:2.

⁹ ECF No. 86-3, *Hearing Transcript* at 63:13-64:25. Defendants' counsel testified under oath that he would have drafted the motion before the telephone call because he "heard about me" from "[t]he majority of the defense bar in South Florida." *Id.* at 64:7-10. Defendants' counsel testified under oath that he could not remember a single name of any attorney he allegedly talked to. *Id.* at 64:13-20.

¹⁰ ECF No. 17-2.

¹¹ The receptionist is employed by another law firm in the office building.

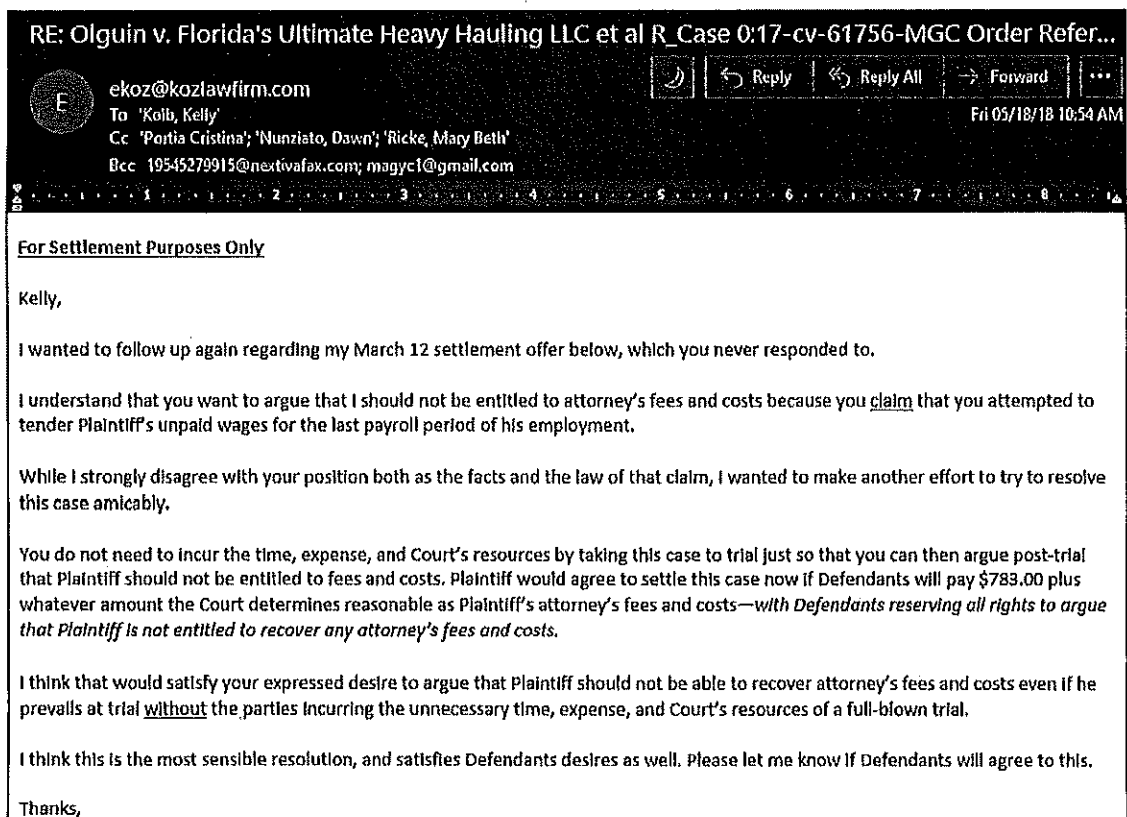
¹² Defendants' counsel repeated his misrepresentation that I "refused" Defendants' paychecks to Olguin in (1) Defendants' Response to Plaintiff's Statement of Claim [ECF No. 21, p. 2, ¶ 3], (2) Defendants' Answer to Plaintiff's Original Complaint [ECF No. 25-1, p. 5, ¶ 21], (3) Defendant's Response to Plaintiff's Motion to Strike Defendant's Affirmative Defenses [ECF No. 38, p. 1, ¶ 1], (4) Defendants' Response to Plaintiff's Motion for Leave to file Motion for Summary Judgment on Defendants' Fourth Affirmative Defenses [ECF No. 55, p. 2, ¶ 1], (5) Defendants' Response to Plaintiff's Motion for Entry of Order Approving Settlement Agreement, for Leave to File Motion for Attorney's Fees and Bill of Costs [ECF No. 70, p. 11, ¶ 10], and (6) Defendants' Response to Plaintiff's Motion for

Throughout this case, Defendants rejected Olguin's multiple settlement offers to pay his claim for unpaid minimum wages and allow the Court to determine Olguin's reasonable fees and costs. Before June 12, 2018, Defendants' only settlement offers required Olguin to agree to recover no fees or costs or required Olguin to agree to allow Defendants to recover their fees and costs. This case settled on June 12, 2018, the deadline for filing the parties' joint pretrial stipulation. Defendants refused to pay any attorney's fees during the entire lawsuit. Before that date, Defendants rejected multiple settlement offers by Olguin to allow the Court to determine Olguin's reasonable fees and costs.

On March 12, 2018, at 1:14 p.m., I emailed Defendants' counsel offering to settle for \$783.00, which represented Olguin's claim for unpaid minimum wages without any compensation for Olguin's overtime claim, plus attorney's fees and costs to be determined by the Court. Defendants did not respond. Instead, at 8:20 p.m., Defendants filed their Motion for Summary Judgment [ECF No. 30].

Absent from this chronology so far is mention of any effort by Defendants to settle this case. That is because none existed. No Fed. R. Civ. P. 68 offers of judgment were ever made either. Thus, from the beginning of the case all the way through Defendants' Motion for Summary Judgment [ECF No. 30], Defendants gave Olguin no option that would allow him to resolve his claims.

On May 18, 2018, I tried again to settle this case:



Entry of Order Approving Settlement Agreement, for Leave to File Motion for Attorney's Fees and Bill of Costs [ECF No. 72, p. 5, ¶ 10].

Defendants responded refusing to allow the Court to determine Plaintiff's reasonable attorney's fees, even with Defendants reserving all rights to argue that Plaintiff is not entitled to recover any attorney's fees and costs. Defendants would only agree to settle if Plaintiff agreed to waive his right to recover attorney's fees.

On May 24, 2018, Magistrate Judge Goodman held an evidentiary hearing on Defendants' Motion to Bar in which Pryor, Defendants' counsel, and I testified. In the courtroom, but before the hearing began, Defendants' counsel reviewed documents with Pryor to help "prepare him" to give testimony at the hearing.¹³ These documents had not been produced to me at any time before the hearing. At the hearing, Defendants' counsel refused my requests to see the documents, produce the documents, or disclose what were the documents. Only after Judge Goodman ordered Defendants' counsel to produce the documents to me did Defendants' counsel comply:

THE COURT: So let's not play games, sir. If opposing counsel asks you to look at the documents and you know you are going to use them either to introduce them or show the witness the documents to refresh his recollection, then show them to the opposing lawyer upon request. So we are now going to have to take a few minutes for plaintiff's counsel to review the documents which maybe, who knows, maybe you should have sent over weeks ago in response to his request or maybe earlier this morning. We are all going to wait for as long as it takes for Mr. Kozolchyk to review those documents.

ECF No. 86-3, *Hearing Transcript* at 9:19-10:4.

Defendants' counsel's billing records later revealed that he met with Pryor on May 23, 2018—the day before the hearing—to prepare him:

05/23/18	K. Kolb	4.40 Prepare for hearing tomorrow. Meet with G Pryor to prepare him for hearing.
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Defendants' billing records, DE 89-7, p. 32.

During the hearing, Pryor testified that he was able to recognize my voice from the brief communication between counsel that occurred before the hearing began.¹⁴ Pryor testified that my voice matched the voice he heard during the single alleged phone call that took place on September 19, 2017.¹⁵ The alleged call at issue occurred more than eight months earlier and lasted 1 minute and 46 seconds.¹⁶ Pryor testified that, at the time of the phone call, Pryor was working as a truck

¹³ Defendants' counsel represented to the Court at the hearing that the documents he was reviewing with Pryor were to help "prepare him" for his testimony at the hearing. ECF No. 86-3, *Hearing Transcript* at 7:18-8:1.

¹⁴ ECF No. 86-3, *Hearing Transcript* at 25:19-24.

¹⁵ Pryor's undated and digitally-signed declaration (ECF No. 10-1) submitted in support of Defendants' Motion to Bar claims the phone call occurred on September 14, 2017—not September 19, 2017, as Pryor testified to at the evidentiary hearing.

¹⁶ ECF No. 86-3, *Hearing Transcript* at 26:24-27:3.

driver and was out of drive time for the day,¹⁷ aggravated,¹⁸ tired,¹⁹ about to go to sleep,²⁰ and did not want to be bothered.²¹

I testified under oath unequivocally that I never spoke to Pryor before,²² never had any prior phone conversation with Pryor,²³ and did not know Pryor.²⁴ I produced the phone records for my law firm,²⁵ the phone records for my cell phone,²⁶ and the phone records for both cell phones of my office manager and fiancé.²⁷ Neither I, nor my office manager and fiancé, own any other phones. All the phone records showed no phone call near the date and time that Pryor alleged that a phone call took place.²⁸

In a later report and recommendation, Magistrate Judge Goodman raised a theory that no one had argued at any point during the evidentiary hearing or the whole litigation:

The phone records from Kozolchyk's office did not show a telephone call to Pryor at 11:22 a.m., the time reflected on Pryor's phone records for incoming calls. [ECF No. 52, p. 17:17-24]. Pryor testified that he was in Vance, Alabama when the telephone call at issue was received. The Undersigned takes judicial notice that Vance, Alabama is in the central time zone, which means that it is one hour earlier there than in South Florida, where Kozolchyk's office is located. Therefore, a phone call from South Florida (if that is where it was made) that Pryor received in Alabama at 11:22 a.m. would have been made from South Florida at 12:22 p.m. (because of the time zone difference). **The phone records submitted by Kozolchyk did not include calls after 12:00 p.m., however.**

ECF No. 104, p. 20 (emphasis added).

Notably, the phone records I submitted did include calls after 12:00 p.m. and showed that there was no call from my office, cell phone, nor the cell phones of my office manager and fiancé at either 11:22 a.m. or 12:22 p.m.:

¹⁷ *Id.* at 18:2-10.

¹⁸ *Id.* at 19:3-4, 19:8.

¹⁹ *Id.* at 16:11, 19:3, 19:9.

²⁰ *Id.* at 16:4-5, 18:2-14.

²¹ *Id.* at 19:5.

²² *Id.* at 36:25-37:3.

²³ *Id.*

²⁴ *Id.* at 32:12-17.

²⁵ ECF No. 45-1.

²⁶ ECF No. 45-2.

²⁷ ECF No. 45-3.

²⁸ Pryor testified that the phone call occurred on September 19, 2017, at 11:22 a.m., and lasted 1 minute and 46 seconds. ECF No. 86-3, *Hearing Transcript* at 26:24-27:3. My law firm phone records show no calls on September 19, 2017, from 11:11 a.m. through 11:53 a.m. My cell phone records show no calls on September 19, 2017, until 11:54 a.m. My office manager and fiancé's cell phones show no calls whatsoever on September 19, 2017.

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No calls between 12:15 PM and 12:31 PM	Out	Sep 19 2017	12:31 PM		\$0.00	00:00:51
	In	Sep 19 2017	12:15 PM		\$0.00	00:01:02

My office phone records showing no calls on September 19, 2017, around 12:22 p.m., ECF No. 45-1 at p. 2.

Koz Law Call Group	Out	Sep 19 2017	11:54 AM	[REDACTED] 9984	102	\$0.00	00:00:00
Koz Law Call Group	In	Sep 19 2017	11:54 AM	[REDACTED] 9984	1-786-924-9929	\$0.00	00:00:07
LJ	Out	Sep 19 2017	11:10 AM	[REDACTED] 9978	786-227-4619	\$0.00	00:01:12
LJ	Out	Sep 19 2017	10:28 AM	[REDACTED] 9978	305-785-5577	\$0.00	00:01:23
LJ	In	Sep 19 2017	10:21 AM	[REDACTED] 0568	1-954-283-9978	\$0.00	00:02:08

My office phone records showing no calls on September 19, 2017, around 11:22 a.m., ECF No. 45-1 at p. 4.

Sep 18	8:01 PM
Sep 19	11:54 AM
Sep 19	11:59 AM
Sep 19	12:01 PM
Sep 19	12:14 PM
Sep 19	12:54 PM

My cell phone records showing no calls on September 19, 2017, around 11:22 a.m. and 12:22 p.m., ECF No. 45-2.

Sep 08	01:24 pm	[REDACTED]	AU	01.00
	04:17 pm		AU	01.00
Sep 17	08:52 pm	[REDACTED]	NW/AU	01.00
Sep 21	07:23 pm		AU	01.00
Sep 22	04:23 pm		AU	01.00

Sep 16	03:27 pm		AU	01:00
	04:52 pm		AU	01:00
	06:00 pm		AU	01:00
	06:37 pm		AU	01:00
Sep 16	05:06 pm		NW/AU	02:00
	05:08 pm		NW/AU	03:00
	05:53 pm		NW/AU	01:00
Sep 20	03:21 pm		AU	02:00
	04:17 pm		AU	01:00
	05:02 pm		AU	01:00
Sep 21	07:24 pm		AU	01:00
	07:26 pm		AU	01:00

My office manager and fiancé's cell phone records showing no calls on September 19, 2017, around 11:22 a.m. and 12:22 p.m., ECF No. 45-3.

Additionally, as Magistrate Judge Goodman noted in a report and recommendation:

The hearing revealed that defense counsel's paralegal had obtained a report containing the following information about Plaintiff's counsel: his social security number, his date of birth, the phone carrier that provides service to him, the names of several individuals with his same last name who may be relatives, the name of his office manager/paralegal and her social security number and date of birth. [ECF Nos. 44-1; 52, pp. 68-69]. Defense counsel said that he did not know whether his paralegal accessed the information in the report in accordance with applicable law. [ECF No. 52, p. 70].

Report and Recommendations on Plaintiff's Motion to Approve Settlement Agreement [ECF No. 81, p. 4].

On May 25, 2018, the Court entered its Post-Evidentiary Hearing Administrative Order [DE 43], which directed the parties to "make an earnest effort to resolve Defendants' [Motion to Bar] and the entire case."²⁹ Filed at ECF No. 86-7 are the emails exchanged between counsel in furtherance of that directive. Importantly, Defendants refused to settle unless Plaintiff either agreed to waive any right to fees or agreed to allow Defendants to seek their fees. These discussions also show Defendants repeatedly attempting to avoid the Court's approval of the settlement, which is required for Plaintiff's right to recover fees and costs in any settlement.

On June 2, 2018, I began conferring with Defendants' counsel on Plaintiff's Motion *In Limine*. On June 12, 2018, I sent Defendants a proposed joint pretrial stipulation in compliance with the Court's deadline.³⁰

²⁹ *Id.* at pp. 1-2.

³⁰ The Court required the parties to file their joint pretrial stipulation no later than June 12, 2018. *See* Order Setting Civil Trial Date and Pretrial Deadlines [ECF No. 13].

On June 12, 2018, apparently after realizing that this case was proceeding to trial, Defendants' counsel called me and, for the first time, agreed to settle Plaintiff's claims without requiring (1) Plaintiff to waive his right to recover attorney's fees, (2) Plaintiff to agree to Defendants recovering their attorney's fees, or (3) Plaintiff to agree to forego the Court's approval of the settlement, which is required for Plaintiff's right to recover fees and costs. As agreed during the phone call, the settlement was memorialized via emails between counsel filed at ECF No. 86-8.

My subsequent efforts to confer with Defendants' counsel on a formal written settlement agreement spanned 22 emails and were unsuccessful.³¹ In those emails, Defendants' counsel took several differing and contradictory positions including that: (1) there was no settlement and, therefore, no Court approval was necessary because Plaintiff's minimum wage claim was being paid in full,³² (2) Defendants were entitled to seek their attorney's fees against Plaintiff as a term of the settlement,³³ and (3) there was no settlement because the settlement terms do not contain every material term.

On July 3, 2018, Plaintiff moved for the Court's approval of the email exchange between counsel at ECF No. 86-8 as an enforceable settlement.³⁴ Defendants opposed Plaintiff's motion³⁵ and argued against the Court's approval of the parties' settlement: "*Wolff v Royal American Management* notwithstanding, there would not seem to be anything to approve as a practical matter and nothing for the Court to oversee regarding a 'settlement' as Defendants unconditionally tendered the full amount of Plaintiff's alleged minimum wages and liquidated damages on June 12, 2018."³⁶

On September 6, 2018, Judge Goodman entered his Report and Recommendations on Plaintiff's Motion to Approve Settlement Agreement [ECF No. 81] recommending that Plaintiff's motion for approval of the parties' settlement be granted.

On September 28, 2018, the Court entered its Order Adopting Report and Recommendation [DE 82], which adopted Judge Goodman's report and recommendation, granted Plaintiff's motion to approve settlement, and approved the parties' settlement agreement in accordance with *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982).

³¹ Those emails were previously filed at ECF No. 67-1 to Plaintiff's Motion for Entry of Order Approving Settlement agreement, for Leave to File Motion for Attorney's Fees and Bill of Costs, and Incorporated Memorandum of Law [ECF No. 67].

³² See ECF No. 61, p. 1, ¶ 1. This was a transparent effort by Defendants' counsel to try to deprive the Court of jurisdiction to award Plaintiff's attorney's fees and costs.

³³ Plaintiff has never agreed that Defendants are entitled to any attorney's fees, and Plaintiff has never agreed to pay Defendants' fees as a term of the settlement. When asked what basis Defendants were relying on to support their belief that they were entitled to recover their attorney's fees post-settlement, Defendants' counsel cited *Goss v Killian Oaks House of Learning*, 248 F.Supp.2d 1162, 1168 (S.D. Fla. 2003). See DE 67-1, email from Defendants' counsel sent Monday, July 2, 2018 at 3:56 pm. Plaintiff strongly disagrees that Defendants are entitled to recover their attorney's fees, and further disagrees that *Goss* supports Defendants' position.

³⁴ Plaintiff's Motion for Entry of Order Approving Settlement agreement, for Leave to File Motion for Attorney's Fees and Bill of Costs, and Incorporated Memorandum of Law [ECF No. 67].

³⁵ "Defendants respectfully request that the Court deny Plaintiff's Motion for the reasons argued above..." ECF No. 72, p. 7.

³⁶ ECF No. 72, p. 5, ¶ 8.

The *Olguin* case was difficult because Defendants' counsel defined the litigation early when he sought sanctions and my disbarment one day after Defendants' answer was filed based on allegations that were highly defamatory and completely false. I produced phone records for my office, my cell phone, and my office manager and fiancé's cell phones—all of which show that no such call from me took place. I testified under oath at the evidentiary hearing and denied unequivocally that I had anything to do with any alleged call to Pryor.³⁷

ADDRESSING REFERRAL LETTER SECTION IV (PATTERN OF BEHAVIOR)

I acknowledge it is accurate that “[i]n numerous instances described above, Mr. Kozolchyk has continued litigating cases after the defendant has offered or sent his client the full value of their claim.” Letter of Referral at p. 8. But those instances were when the defendants would not agree to pay reasonable fees or agree to let the courts determine reasonable fees. The Eleventh Circuit does not “authoriz[e] the denial of attorney’s fees, requested by an employee, solely because an employer tendered the full amount of back pay owing to an employee, prior to the time a jury has returned its verdict, or the trial court has entered judgment on the merits of the claim.” *Dionne v. Floormasters Enters., Inc.*, 667 F.3d 1199, 1206 n. 6 (11th Cir.2012). *Half the cases identified involve claims for last paychecks with low values. I no longer bring these claims in federal court. Additionally, I am more flexible when negotiating settlements. If defendants express a willingness to pay the plaintiffs’ claims but will not agree to pay my attorney’s fees and will also not agree to let the court determine reasonable fees, I will voluntarily provide my billing records.*

I admit that I continue to fight for payment of my clients’ claims, costs and my fees. I often have reduced my fees to close cases. But I cannot continue to represent clients with valid claims against employers under the FLSA unless I get paid for my services. Respectfully, I do not “generate unnecessary work” in cases to “later request attorney’s fees for the additional time spent.”³⁸ Plaintiffs in FLSA cases are not entitled to recover attorney’s fees unless and until they become the prevailing party. Where a defendant tenders a check, but refuses to pay any fees, or will not agree to pay reasonable fees, and will not agree to let the court determine reasonable fees, I am forced to continue litigating the case to ensure the plaintiffs prevail on their claims. The Eleventh Circuit decision *Dionne* makes clear that defendants cannot simply tender a check and not be responsible for paying plaintiffs’ reasonable fees. If defendants could end cases by merely agreeing to pay the plaintiffs’ claims without also agreeing to pay the plaintiffs’ attorney’s fees, there would be no attorneys willing to represent plaintiffs in FLSA cases.

I disagree with the conclusion that I made material misrepresentations to the Court or opposing counsel to avoid judicial scrutiny of any settlement agreement.

³⁷ In the Referral Letter, at p. 8, it is noted that “Magistrate Judge Lurana S. Snow now recuses in all cases where Mr. Kozolchyk is counsel.” My understanding is that she does so because her former career law clerk’s husband shares the adjacent office space as my law firm.

³⁸ In *Shuman*, I accepted and was paid \$2,500 inclusive of my costs. I had much more time and costs in the case than what I accepted. I filed the motion in limine because I was obligated to comply with the Court’s deadlines. Additionally, because Defendants at the time had refused to pay my fees, I was required to establish Plaintiff as the prevailing party. In that case, I initiated settlement discussions—not Defendants. My initial communication offered to confer on attorney’s fees to try to resolve them amicably and without the Court’s intervention and agreed to let the Court determine reasonable fees if we could reach agreement. Defendants’ counsel responded demanding the case be dismissed with prejudice without payment of any fees or costs.

In *Shuman*, again, the fees and costs Defendants agreed to pay, and I accepted, totaled \$2,500. This amount represented far less than the time and costs I incurred in the case. At no point did I deny or conceal from the Court the facts and circumstances regarding the resolution of this case. In three separate filings before calendar call, I informed the Court that I would be receiving payment for fees and costs and that Shuman's claims would be dismissed without prejudice.³⁹ At no point did I hide from the Court the amount of fees and costs that I was receiving. Nor do I believe that the \$2,500 for fees and costs was unreasonable or would not be approved by the Court under *Lynn's Food Stores, Inc.*

As discussed *supra*, I believed in good faith that the May 2019 resolution of the *Shuman* case was not a settlement. Because Shuman's claims were being dismissed without prejudice, I also believed the dismissal was not subject to the Court's review and approval under *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982) in reliance upon *Perez-Nunez, Lopez, Blecher*, and *Appleby, supra*. See also *Defaite v. Phoenix Complete Auto Care Inc. et al*, Case No. 19-62518-Smith, ECF No. 21. I acknowledge that I was wrong and that the circumstances under which this case was resolved could be considered a settlement. However, I was not trying to evade Court approval. The fact that I was receiving a nominal amount for fees and costs was never hidden from the Court.

I did not misrepresent Judge Dimitrouleas's standard FLSA order to opposing counsel. I explained that there are numerous cases holding that dismissal without prejudice is not subject to judicial review under *Lynn's Food Stores, Inc.*, and that Judge Dimitrouleas's standard FLSA order discusses situations involving dismissals without prejudice where there are no settlements. Defendants' counsel specifically said at calendar call that they did their own research and agreed with my analysis: "We went back, we analyzed *Lynn Foods*, we agreed with that analysis." When discussing Judge Dimitrouleas's standard FLSA order at the calendar call, the representations I made to the Court were as follows:

He has a standing order that comes out that talks about situations where there is dismissal without prejudice. It's a standard order he enters in FLSA cases.... Well, I'm going off of my memory right now, so I certainly don't have a verbatim recollection of it. I'm tremendously paraphrasing here, but basically something to the extent that, the Court recognizes situations where a case may be dismissed without a settlement or without prejudice, something to that effect. But please don't hold me to it, because I don't recollect it.

Judge Dimitrouleas's standard FLSA order does discuss situations where a plaintiff chooses to voluntarily dismiss the case without prejudice and where there has been no settlement or compromise. For the reasons mentioned above, I believed *Shuman* represented that kind of situation. I acknowledge that I was wrong and that the circumstances under which this case was resolved could be considered a settlement. But I did not misrepresent to the Court during calendar call Judge Dimitrouleas's standard FLSA order. I made clear that I was paraphrasing and going

³⁹ See Notice [ECF No. 27], Response to Order [ECF No. 31], and Stipulation of Dismissal without Prejudice [ECF No. 34].

off my memory, but that the Court recognizes situations where “a case may be dismissed without a settlement or without prejudice, something to that effect.” The part I was referring to was this:

The Court recognizes that there may be situations in which the plaintiff chooses to voluntarily dismiss the case, even if there has been no settlement or compromise.

(1) In that event, the court will require the notice of voluntary dismissal to affirmatively state that (a) no settlement agreement has been reached, *and* (b) the plaintiff has voluntarily chosen to abandon the FLSA claims at this time.

(2) The Court will construe such a dismissal to be without prejudice, regardless of the language used in the notice. Plaintiff will be able to re-file or otherwise pursue the claim in the future, subject to the statute of limitations.

Smith v. Intercoastal Air, LLC et al, Case 17-cv-61510-Dimitrouleas, ECF No. 4, p. 2 (emphasis added).

Judge Dimitrouleas’s order does direct that “dismissals without prejudice require the Court to review any settlement agreement that has been reached by the parties.” For the reasons discussed above, I believed there was no settlement agreement and, therefore, *Shuman* fit into the second category described in the order—dismissals without prejudice where there are no settlements. I have never knowingly or deliberately made misrepresentations to any court, nor would I ever do that.

CONCLUSION

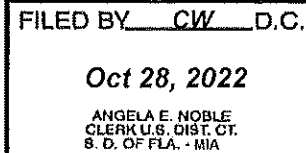
Within the span of four months from April 2019 through July 2019, I lost my fiancé, I was sanctioned more than \$30,000 in *Olguin*, I endured the defendant’s counsel’s conduct in *Soto Aldana*, and I received the Letter of Referral. That was the worst period in my life. These past two years while the Letter of Referral has remained pending have been extraordinarily difficult for my family and me.

In February 2020, I traveled to Tallahassee and attended a Florida CLE on practicing with professionalism. I have undergone counseling with my attorney, David Rothman. I have engaged in intensive self-reflection to learn from my past mistakes and to avoid repeating them in the future. I am not perfect and this is an ongoing process, but where I am today is very different from where I was at that time. When I am attacked by an opposing counsel, I do not react in kind and I strive always to take the high road. Today, I keep my filings and communications dispassionate, factual, and singularly focused on the relevant issues.

Respectfully submitted,



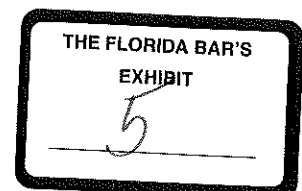
Elliot Kozolchyk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA****ADMINISTRATIVE ORDER 2022-94
CASE NO. 20-MC-21879****IN RE: ELLIOT ARI KOZOLCHYK
FLORIDA BAR # 74791**
_____ /**ORDER ON FINAL REPORT AND RECOMMENDATION**

On July 17, 2019, then-Chief Judge Moore, at the request of Judges Donald M. Middlebrooks and Robin L. Rosenberg, submitted a letter of referral [ECF No. 1] to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance to investigate the conduct of attorney Elliot Ari Kozolchyk. Following that referral and a hearing before the Committee, the Committee issued a Proposed Report and Recommendation [ECF No. 7] on August 15, 2022, giving Mr. Kozolchyk 14 days to respond in accordance with Rule 6(c)(2)(B)(ii) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys. Mr. Kozolchyk filed a Response to Report and Recommendation [ECF No. 8], on August 16, 2022; and the Committee submitted a Final Report and Recommendation [ECF No. 9] to the Court on August 17, 2022.

An Order to Show Cause [ECF No. 10] was issued on August 30, 2022, giving Mr. Kozolchyk an opportunity to respond to the Final Report and Recommendation. Mr. Kozolchyk filed his response [ECF No. 11], indicating his acceptance of the Committee's recommendations.

Pursuant to Rule 6(c)(2)(B)(v) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, Local Rules of the United States District Court for the Southern District of Florida, the Undersigned submitted this matter to the Court for its



consideration at a regularly scheduled Judges' Meeting held on October 6, 2022. Upon review of the Final Report and Recommendation, response, and attachments, by unanimous vote of all District Judges and Senior District Judges eligible to vote, the Court approved and adopted the Committee's Final Report and Recommendation in full.

Given this background, in accordance with Rule 6(c)(2)(B)(v) and the Court's inherent power to regulate membership in its bar for the protection of the public interest, *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it."),

IT IS ORDERED that the Committee's Final Report and Recommendation is **ADOPTED**, and the matter is **CLOSED**.


IT IS FURTHER ORDERED, consistent with the Final Report and Recommendation, as follows:

1. Mr. Kozolchyk is required to take two CLE courses within 60 days of entry of this Order as follows: (1) Episodes 1 through 4 of the "Your Honor Series," hosted by Paul Lipton, and (2) at least 2 hours on federal court practice; and provide an affidavit to the Committee attesting to timely completion of the CLE.
2. For a period of 12 months from entry of this Order, Mr. Kozolchyk must self-report to the Committee within 72 business hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk.
3. Within 30 days from entry of this Order, Mr. Kozolchyk shall prepare and deliver letters of apology to Judges Moore, Middlebrooks, Dimitrouleas, Rosenberg, Seitz, Moreno,

Goodman, Strauss; and retired Magistrate Judge Seltzer; and provide a copy of each letter to the Committee.

4. Within 60 days from entry of this Order, Mr. Kozolchyk shall enroll in counseling for anger management for a minimum of 25 hours, with the course to be approved in advance by the Committee.

DONE AND ORDERED in Miami, Florida, this 28th day of October, 2022.


CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

- c: All Miami Eleventh Circuit Court of Appeals Judges
All Southern District of Florida District Judges
All Southern District of Florida Bankruptcy Judges
All Southern District of Florida Magistrate Judges
United States Attorney
Circuit Executive
Federal Public Defender
Clerks of Court – District, Bankruptcy and 11th Circuit
Florida Bar and National Lawyer Regulatory Data Bank
Library
William C. Hearon, Chair, Ad Hoc Committee on Attorney Admissions, Peer Review,
and Attorney Grievance
Elliot Ari Kozolchyk

November 28, 2022

Via Email: dimitrouleas@flsd.uscourts.gov

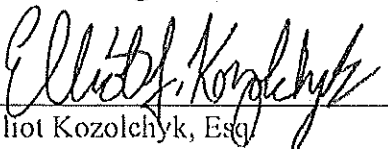
Judge William P. Dimitrouleas
U.S. Federal Building and Courthouse
299 East Broward Boulevard
Courtroom 205B, Chambers 205F
Fort Lauderdale, Florida 33301

Dear Judge Dimitrouleas:

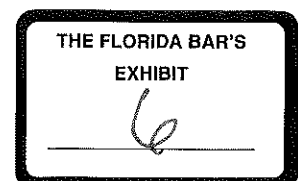
This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozolchyk, Esq.
Bar No.: 74791



November 28, 2022

Via Email: goodman@flsd.uscourts.gov

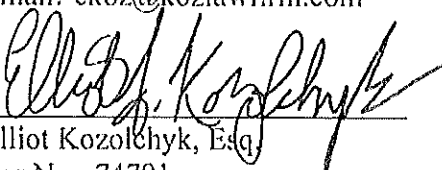
Judge Jonathan Goodman
James Lawrence King Federal Justice Building
99 N.E. Fourth Street
Room 1168
Miami, Florida 33132

Dear Judge Goodman:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

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Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozolchyk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: middlebrooks@flsd.uscourts.gov


Judge Donald M. Middlebrooks
Paul G. Rogers Federal Building and U.S. Courthouse
701 Clematis Street
Room 257
West Palm Beach, Florida 33401

Dear Judge Middlebrooks:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com

A handwritten signature in black ink, appearing to read "Elliot Kozolchyk", is written over a horizontal line.

Elliot Kozolchyk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: moore@flsd.uscourts.gov

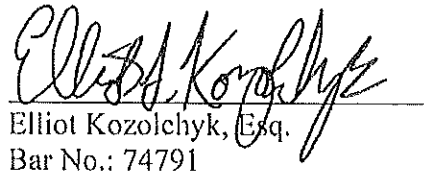
Judge K. Michael Moore
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 13-1
Miami, Florida 33128

Dear Judge Moore:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com


Elliot Kozolchyk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: moreno@flsd.uscourts.gov

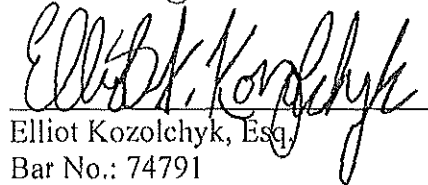
Judge Federico A. Moreno
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 12-2
Miami, Florida 33128

Dear Judge Moreno:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com


Elliot Kozolchyk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: rosenberg@flsd.uscourts.gov

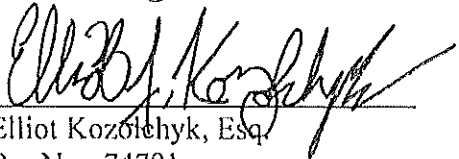
Judge Robin L. Rosenberg
Paul G. Rogers Federal Building and Courthouse
701 Clematis Street
Courtroom 2
West Palm Beach, Florida 33401

Dear Judge Rosenberg:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozolchuk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: seitz@flsd.uscourts.gov

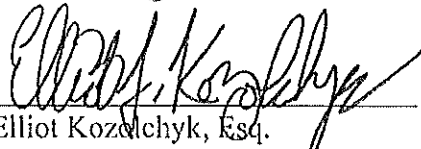
Judge Patricia A. Seitz
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Room 11-4
Miami, Florida 33128

Dear Judge Seitz:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozelchik, Esq.
Bar No.: 74791

November 28, 2022

Via Email: seltzer@flsd.uscourts.gov

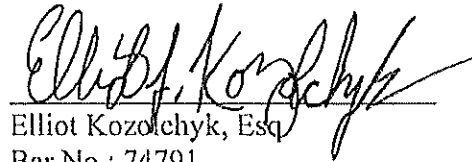
Judge Barry S. Seltzer
U.S. Federal Building and Courthouse
299 E Broward Blvd
Fort Lauderdale, FL 33301

Dear Judge Seltzer:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in the cases referenced in the July 17, 2019 letter of referral. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozolchyk, Esq.
Bar No.: 74791

November 28, 2022

Via Email: strauss@flsd.uscourts.gov

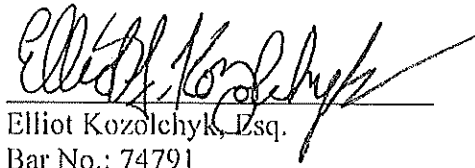
Judge Jared M. Strauss
U.S. Federal Building and Courthouse
299 East Broward Boulevard
Chambers 109
Fort Lauderdale, Florida 33301

Dear Judge Strauss:

This is my letter of apology pursuant to Administrative Order 2022-94. I am sincerely sorry for the events that occurred in *Dahdouh et al v. Road Runner Moving and Storage Inc et al*, Case No. 20-61936. I will continue working to ensure those events do not happen again.

Respectfully submitted,

Koz Law, P.A.
800 East Cypress Creek Road, Suite 421
Fort Lauderdale, FL 33334
Tel: (786) 924-9929
Fax: (786) 358-6071
Email: ekoz@kozlawfirm.com



Elliot Kozolchuk, Esq.
Bar No.: 74791

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-MC-21879

IN RE:

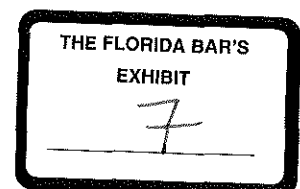
ELLIOT ARI KOZOLCHYK
Florida Bar # 74791

THE AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW, AND
ATTORNEY GRIEVANCE FOR THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA

COMMITTEE REPORT ON ELLIOT ARI KOZOLCHYK'S COMPLIANCE
WITH OCTOBER 28, 2022 ORDER ON FINAL REPORT AND RECOMMENDATION

On October 28, 2022 the Court entered its Order on Final Report and Recommendation concerning Mr. Elliot Ari Kozolchyk. The Order approved and adopted in full the Final Report and Recommendation ("Final R&R") submitted to the Court by the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the "Committee"). The Final R&R detailed the following obligations imposed upon Mr. Kozolchyk, and the Committee reports to the Court regarding Mr. Kozolchyk's compliance therewith, based upon an affidavit from Mr. Kozolchyk and/or evidence of completion provided to the Committee by Mr. Kozolchyk.

- Requirement to complete two specific CLE courses (one containing four episodes) within 60 days of the Court Order and to provide an affidavit to the Committee attesting to same. TIMELY COMPLETED.
- Delivering letters of apology to certain members of the Court within 30 days of the Court Order. TIMELY COMPLETED.



- Within 60 days of the Court Order enrolling in counseling for anger management for a minimum of 25 hours; the courses to be approved in advance by the Committee. TIMELY ENROLLED AND ALSO COMPLETED.
- For a period of 12 months from the date of the Order, a continuing requirement to self-report to the Committee within 72 hours of the entry of any court order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk. MR. KOZOLCHYK APPEARS TO BE IN COMPLIANCE, WITH HIS MOST RECENT DISCLOSURE TO THE COMMITTEE ON FEBRUARY 13, 2023.

Respectfully submitted,



William C. Hearon, Esq.
Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March 2023, a true and correct copy of the foregoing was served via e-mail to Elliot Ari Kozolchyk, Esq. at ekoz@kozlawfirm.com.



William C. Hearon, Esq.

Page 1

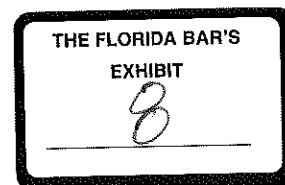
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 20-MC-21879

IN RE:

ELLIOT ARI KOZOLCHYK
Florida Bar #74791

Transcript of the testimony of Elliot Kozolchyk before the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") by Zoom Video Conference commencing at 3:00 p.m. on Thursday, November 9, 2023, reported by MARIA ISABEL SALUM, Registered Professional Reporter and Notary Public in and for the State of Florida.



Maria I. Salum, P.A.

305 746-3079

APPEARANCES

COMMITTEE MEMBERS:

William C. Hearon, Chair
Da'Morus Cohen
Garth Yearick
Seth Miles
Bridget Berry
Jennifer Wahba
Alison Smith
Steve Davis
Bertila Fernandez
Andrew Figueroa
Celeste Higgins
Margot Moss
Tiffani Lee
Devang Desai
Valencia Gallon-Stubbs
Bernardo Lopez
Allison Kahn
Richard Baron

WITNESS:

Elliot Kozolchyk

THE REPORTER: Can you raise your

1 right hand, please?

2 Do you solemnly swear or affirm that
3 the testimony you're about to give will
4 be the truth, the whole truth and nothing
5 but the truth?

6 MR. KOZOLCHYK: Yes.

7 MR. HEARON: Mr. Kozolchyk, welcome
8 back before the committee. We're going
9 to ask you a series of questions. If at
10 any point in time you want to take a
11 break, let us know. You are under oath.
12 And the committee members will go in an
13 order that was prearranged and Mr. Cohen
14 will go first because he was on your
15 subcommittee. The other two subcommittee
16 members are not here today so I will turn
17 it over to him.

18 If you have any questions or need to
19 stop at any point during the process,
20 just let me know.

21 MR. KOZOLCHYK: Thank you.

22 MR. COHEN: Good afternoon, Mr.
23 Kozolchyk. How are you doing?

24 MR. KOZOLCHYK: Could be better.
25 How are you doing?

1 MR. COHEN: I'm doing well. It's
2 good to see you again. I'm not going to
3 have a lot of questions for you. I'm
4 pretty familiar with the facts.

5 I received all of the emails that
6 you have sent to Mr. Hearon regarding
7 compliance with the October 28, 2022
8 order on final report and recommendation.
9 The questions I'm going to ask you are
10 going to relate to kind of two different
11 topics. One would be what your thoughts
12 are or what you believe your obligations
13 are under the order and whether you have
14 complied with the order, and then I guess
15 an ancillary topic within the second
16 topic would be, to the extent that you
17 have not complied with the order, have
18 you disclosed the noncompliance and why
19 you haven't complied. So that's really
20 what I want to focus on with my
21 questions. And so, I will go ahead and
22 jump in if you're ready.

23 MR. KOZOLCHYK: Can you break that
24 down? That's a multi-part question.

25 MR. COHEN: I'm going to ask you

1 questions. I want to make sure you
2 understand where I'm kind of leaning --
3 where we are going, so you understand
4 what I am going to ask about.

5 So do you have a copy of the October
6 28th, 2022 order in front of you right
7 now?

8 MR. KOZOLCHYK: Not at this moment,
9 but I can try to get it.

10 MR. COHEN: I'm assuming you have
11 read the order, correct?

12 MR. KOZOLCHYK: Yes.

13 MR. COHEN: And you understand what
14 your obligations are under the order?

15 MR. KOZOLCHYK: Yes.

16 MR. COHEN: Okay. So I'm going to
17 focus on the reporting requirement.
18 There's language in the order that says,
19 "For a period of 12 months from entry of
20 this order, Mr. Kozolchyk must self
21 report to the committee within 72
22 business hours of the entry of any order
23 or court filing by opposing counsel
24 alleging, describing or relating to any
25 problematic or unprofessional conduct by

1 Mr. Kozolchyk."

2 Are you familiar with that language?

3 MR. KOZOLCHYK: Yes.

4 MR. COHEN: And what do you think
5 that language requires of you?

6 MR. KOZOLCHYK: It's very broad so
7 anything -- any kind of criticism, I
8 should report.

9 MR. COHEN: When you say
10 "criticism," what do you mean?

11 MR. KOZOLCHYK: Any critique on me
12 put in a filing, I should report.

13 MR. COHEN: And you should report it
14 within what period of time?

15 MR. KOZOLCHYK: 72 hours.

16 MR. COHEN: In your opinion, do you
17 believe you have complied with the order
18 during the 12 month period starting on
19 October 28th, 2022 through, I guess that
20 would be the 27th or 29th of 2023?

21 MR. KOZOLCHYK: I believe I have
22 tried to report. I know -- I have
23 actually counted the times I reported,
24 and I believe the number of times I've
25 reported is ten times. I've tried to

1 report everything.

2 I know Mr. Hearon brought to my
3 attention one item that fell through the
4 cracks that was not reported. I know
5 some other items that didn't occur to me
6 at the time, but I then reported late,
7 but I certainly did not try to not report
8 something.

9 MR. COHEN: My question was really
10 yes or no, have you complied with the
11 order as it relates to the reporting
12 obligation?

13 MR. KOZOLCHYK: Not 100 percent, so
14 I guess it's no.

15 MR. COHEN: You state that you
16 understand the obligations and so, you
17 say it's very broad. And you say any
18 critique of you should be reported.

19 I guess, what type of critiques fall
20 under any problematic or unprofessional
21 conduct by Mr. Kozolchyk?

22 MR. KOZOLCHYK: Well, the word
23 "problematic," I interpreted to mean
24 almost anything, so any criticism of any
25 kind, I should report.

1 MR. COHEN: Understood.

2 So you said you issued or you
3 furnished ten compliance reporting to the
4 committee in the past 12 months?

5 MR. KOZOLCHYK: Based on my count.
6 I counted it before this meeting.

7 MR. COHEN: And you stated that you
8 know you haven't fully complied with the
9 order.

10 So have you gone back through your
11 cases to see how many instances of
12 problematic or unprofessional conduct you
13 failed to report?

14 MR. KOZOLCHYK: Well, I know I sent
15 an email to Mr. Hearon a week or two ago
16 where I reported three items that were
17 untimely. That was my effort in good
18 faith to try to think of anything that I
19 might have missed before. I did not
20 willfully miss anything, but it was my
21 understanding from speaking to Mr. Hearon
22 that I have missed things, so I thought
23 very hard and I reviewed as best as I
24 could and I found three instances that
25 could be interpreted as me missing

1 something, and so I reported those, and
2 then to my understanding, there was still
3 a fourth item that I missed, which is the
4 Reddish case, so I definitely didn't do
5 that on purpose.

6 MR. COHEN: It's your testimony that
7 you failed to report four times?

8 MR. KOZOLCHYK: It is my
9 understanding -- well, the three items I
10 reported -- on two of those, there's an
11 argument to be made that they would not
12 be within the scope.

13 Again, the scope is very broad and
14 in my humble opinion, not very -- it's
15 kind of vague. But I don't mean that to
16 criticize the order. I'm trying to
17 comply with the order. I think there's
18 an argument to be made that two of those
19 three items that I reported a week or two
20 ago to Mr. Hearon may be outside the
21 scope of that, but in abundance of
22 caution, I reported them.

23 One of them, I could certainly --
24 the third I could certainly see would be
25 within the scope and so I definitely

1 should have reported that, and when I
2 reviewed everything, I saw that and I
3 reported it. But yes, it was untimely
4 along with those other two things. The
5 one that Mr. Hearon brought to my
6 attention earlier today, I absolutely --
7 it absolutely did not even occur to me
8 until he e-mailed me about it.

9 MR. COHEN: For the two that you
10 state are outside the scope of
11 problematic and unprofessional conduct,
12 can you explain why for each instance?

13 MR. KOZOLCHYK: I'm saying an
14 argument could be made. I'm not being
15 black and white. I think it's gray. And
16 so, I reported it in an abundance of
17 caution. I'm certainly not here to nit
18 pick or argue whether it is or it's not.
19 I'm here to comply as best as I can. So
20 if you want me to review the three that I
21 reported to Mr. Hearon a week or two ago
22 and explain the context of those, I'm
23 happy to do that. Is that what you want
24 me to do?

25 MR. COHEN: For sake of time, I

1 won't have you do that.

2 My next question would be: When did
3 it occur to you to make the report to
4 Mr. Hearon of those three instances that
5 you reported to him last week? Was it
6 last week that it came to your -- that
7 you thought you should report it or was
8 it at the time of the, you know, each of
9 the instances?

10 MR. KOZOLCHYK: I'm trying to think.

11 I had some communications with Mr.
12 Hearon that suggested that something was
13 missed and I didn't know what it was. So
14 it was after that -- I think it was when
15 I got notice of this hearing. I got an
16 email about a notice of a hearing -- this
17 hearing and so I started thinking, "Okay,
18 did I miss something? Did I miss
19 something?" So I started thinking. I
20 started thinking. And so between that
21 time and when I sent the email is when I
22 thought of those three items.

23 MR. COHEN: Any reason why, I guess
24 it didn't occur to you at the time
25 whether the motions were filed or there

1 were court orders that you didn't report
2 to the committee?

3 MR. KOZOLCHYK: Yeah, that goes into
4 the context that I was offering. If you
5 want me to get into those three items,
6 and I can be brief.

7 Just as an aside, I'm not trying to
8 justify anything. I'm merely speaking
9 the truth as to the reason why they were
10 not reported. Not that they're good
11 reasons. It's just the truth. I'm not
12 trying to defend anything.

13 MR. COHEN: Okay.

14 MR. KOZOLCHYK: So the three things
15 I reported, one of them was -- the last
16 one in the email was the motion to
17 dismiss where they said, "Plaintiff was
18 trying to mislead the court." So that
19 one didn't register because technically
20 they were referring to the plaintiff, not
21 me, so the plaintiff was trying to
22 mislead the court. But then upon further
23 reflection, let me cast as broad a net as
24 possible, because I don't want to be
25 accused of not complying with the order,

1 in terms of willfully not complying with
2 the order, so I was like, you know, "This
3 can be interpreted as against me, let me
4 go ahead and include that in there." So
5 that's with regard to that instance.

6 But just to give further context on
7 that instance, the irony is that the
8 defendant's attorney was citing --
9 mis-citing a case and if you look at the
10 case, his arguments were really
11 misleading the court, not my arguments,
12 but again -- so my thinking at the time
13 was, that's referencing the plaintiff,
14 it's not referencing me specifically, so
15 I thought it fell outside the scope. But
16 then I got this notice of hearing and I'm
17 like, shoot, let me think of every
18 possible thing that could conceivably be
19 within the scope, and I thought, well,
20 that could conceivably be within the
21 scope, let me report that.

22 Another item was in the Santiago
23 case. There are two reasons why I
24 thought -- why I did not think to report
25 it at the time. And again, I'm not

1 suggesting these are good reasons. I'm
2 not trying to defend anything. I'm just
3 simply telling the truth as to why at
4 that time I did not report it.

5 Number one, I thought they were --
6 the way he worded it was kind of in the
7 abstract, if you look at the language he
8 used. And so, I thought the way he
9 worded it kind of insinuates without
10 actually saying it. I thought they were
11 abstract insinuations rather than
12 explicit attacks on me. And so I thought
13 that would put it outside the scope.

14 And the second reason, because I
15 didn't think -- opposing counsel is a
16 former committee member of this
17 committee. I didn't think he would
18 really -- I was a little in disbelief and
19 skeptical that he really would put these
20 attacks at me and require me, trigger
21 something from me to have to report to
22 the committee. I was a little bit
23 incredulous that he would really be doing
24 that deliberately to cause me to have to
25 report this. And since he worded it in

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1 such an abstract way, I thought maybe it
2 was outside the scope.

3 As further context, those abstract
4 things he was saying, those insinuations
5 were disproven because he ended up losing
6 summary judgment and the case had merit,
7 and we then settled after that. So I
8 felt his insinuations were completely
9 meritless. I felt he worded it
10 sufficiently in the abstract, that it did
11 not trigger the scope, to be within the
12 scope. I thought -- I was a little bit
13 in disbelief that surely as a former
14 member of this committee, he's not really
15 attacking me where I now need to report
16 it. He wouldn't do something like that.

17 But then as I got the notice of this
18 hearing, I thought really hard, "Is there
19 anything else?" So that came to mind
20 again. And I'm like, "Let me cast as
21 broad a net as possible, and let me
22 include that."

23 The third item was the motion for
24 sanctions in the Martinez case. And
25 again, I'm not trying to defend anybody.

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1 I'm telling the honest truth as to why
2 that was not reported.

3 In all honesty, that one did not
4 even come to my mind. It did not even
5 register. And I could appreciate the
6 members of this committee saying, "How
7 could a rule of a motion for sanctions
8 not register the need to report it?" I
9 could certainly put my eyes in your
10 perspective and think why would that not
11 register. And I'm not justifying it and
12 I'm telling you honestly it didn't, and I
13 will explain why it did not.

14 I have never dealt with that
15 attorney before in my life. I don't know
16 her, so it couldn't have possibly been
17 something personal. Her first
18 communication was this Rule 11 from the
19 very beginning. She was threatening Rule
20 11 sanctions. So it never -- my mind
21 never correlated to, "this is about me."
22 This was about her not understanding the
23 issues in the case, and ultimately I
24 moved for summary judgment on that exact
25 issue that she argued was frivolous and

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1 that's when the case settled.

2 I feel very strongly that that
3 motion for summary judgment would have
4 been granted if it didn't settle.

5 It was just not so personal to me
6 and I didn't know her and her arguments
7 were just about that issue that she
8 contended were frivolous, when really the
9 undisputed facts showed it should be --
10 that summary judgment was appropriate on
11 this issue. It just never occurred to me
12 that I needed to report it.

13 But then when I got the notice of
14 the hearing, I'm thinking, "What could I
15 have possibly missed," and that case came
16 up, and I thought, let me cast as broad a
17 net as possible and disclose it.

18 MR. COHEN: I appreciate the
19 context.

20 And the reason why I'm asking kind
21 of the questions on what you think your
22 obligations are and whether you think you
23 complied, one, have you complied with the
24 order? That's obviously one point. The
25 second point I'm trying to understand is

1 whether you, in your efforts of complying
2 with the order, if you're being
3 over-inclusive, are you being
4 under-inclusive? Are you thinking about
5 the order? When you get a motion or a
6 Rule 11 sanctions motion or something
7 like that, was the order triggered in
8 your mind, like, "Hey, I have this
9 compliance order that I need to comply
10 with"? I'm just trying to understand
11 whether you have kind of sufficient
12 processes in place to comply, and the
13 reason why I ask that -- and I'm going to
14 let Garth chat about the Reddish case --
15 it does get to a topic of whether you are
16 sufficiently thinking about various
17 obligations, whether it be court orders,
18 scheduling orders and the like, and
19 that's kind of why I'm asking. Maybe you
20 do have an issue with kind of the
21 definition, but that's kind of what I was
22 getting to with my line of questions.

23 I'm going to turn it over to Garth
24 in a second.

25 It's your testimony that you think

1 there's only been four instances that
2 have been missed in the 12 month
3 reporting period?

4 MR. KOZOLCHYK: Before I got an
5 email from Mr. Hearon earlier today, I
6 thought there were only three. If you
7 would have asked me the same question
8 without Mr. Hearon's email earlier today,
9 I would have said three. I'm only
10 telling you what I think. I don't know
11 for sure and I'm doing my best to comply.
12 I gain nothing from not complying. I'm
13 only making my life harder by not
14 complying.

15 So if there's additional I missed,
16 it's not intentional.

17 MR. COHEN: Understood. Let's say
18 it is that those are the four only that
19 we have missed. So we have 14 instances
20 of required reporting in a 12 month
21 period. Go ahead.

22 MR. KOZOLCHYK: You said 14. I
23 assume you're saying the ten that I
24 counted and then you're counting four
25 more. When I counted the ten, I was

1 counting -- and I think those three were
2 in one email and I counted that as one as
3 well.

4 MR. COHEN: So we can settle on ten
5 instances of required reporting during
6 the 12 month period.

7 MR. KOZOLCHYK: Ten emails. I sent
8 ten emails. That one email was with
9 three cases and I completely misread it,
10 depending on how you do the math. And I
11 frankly don't recall if one of my other
12 emails included two cases or not.

13 MR. COHEN: For discussion purposes,
14 let's just say somewhere between ten and
15 14 instances of required reporting of
16 potentially problematic and
17 unprofessional behavior, correct, in a 12
18 month period.

19 MR. KOZOLCHYK: Yeah, the number is
20 correct and when you say "potentially,"
21 I'm not trying to nit pick anything and
22 I'm certainly not trying to be defensive.
23 Any attorney can write anything in the
24 file. It doesn't necessarily make it
25 true, you know, but I guess if you want

1 to say it's potentially unprofessional,
2 then certainly.

3 MR. COHEN: Understood. And so, in
4 your opinion -- and I guess I will start
5 with the referral from the judges, the
6 complaints from the attorneys and the
7 like. Ten instances seems like a
8 material amount. My question would go
9 to, do you believe that your behavior, or
10 at least the alleged behavior has changed
11 from when you were first before the
12 subcommittee and the full committee to
13 now 12 months later?

14 MR. KOZOLCHYK: Extremely,
15 tremendously. Go through those
16 reportings and find an instance where I
17 was aggressively attacking the other
18 side. I have -- as far as I know,
19 there's not an instance. If you guys
20 find one, it's news to me. I have
21 drastically -- I mean, I don't -- I am
22 constantly being attacked, which is why
23 I'm reporting, because every time I get
24 attacked I have to report it. But I'm
25 not reciprocating. I'm focusing on the

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1 issues in the case.

2 Just to point to an example of the
3 Santiago case were the member of this
4 committee, the former member of this
5 committee, made these insinuations that
6 were very personal to me, very personal
7 attacks to me. My response and again the
8 motion for summary judgment reply, he
9 also sent me a letter, which this is not
10 part of the reporting requirements, it's
11 another layer of context that I reported
12 and it gives more light to the situation.

13 He sent a letter to me before
14 threatening sanctions under the vexatious
15 litigation statute where he says that
16 this case is just a vehicle to turn more
17 attorney's fees. And he made
18 insinuations to that effect in the motion
19 for summary judgment and the reply, which
20 were, you know -- anyway, I took it very,
21 very personally, but if you read my
22 response, I don't speak about -- I don't
23 even address it. I don't even try to
24 defend the personal attacks. I am just
25 discussing the issues material to summary

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1 judgment that ultimately the judge ruled
2 against him on.

3 That's a real shining example where
4 I didn't -- it was like he never even
5 wrote it in my response. And I have
6 tried. I have tried in all my filings to
7 not fight back. When I get attacked,
8 when I get personally attacked, I don't
9 reciprocate. That is under my control.
10 I can't control when a defense
11 attorney -- and these cases are very
12 contentious. They are very, very
13 contentious cases.

14 I can't control when a defense
15 attorney decides to attack me personally,
16 but I could certainly decide -- control
17 how I respond, and I think the way I
18 responded is tremendously different.

19 MR. COHEN: Thank you. I have no
20 further questions.

21 MR. HEARON: Garth?

22 MR. YEARICK: Good afternoon, Mr.
23 Kozolchyk.

24 I am going to ask you a few
25 questions about the Reddish case. When I

1 say the Reddish case, are you familiar
2 with what I'm talking about?

3 MR. KOZOLCHYK: Yes.

4 MR. YEARICK: It's a case that was
5 pending in front of Judge King and then
6 Judge Williams, right?

7 MR. KOZOLCHYK: Yes.

8 MR. YEARICK: And I'm going to ask a
9 couple of foundational questions first.

10 The committee's and Judge Altonaga's
11 eventual order approving the report and
12 recommendation of the committee that was
13 entered on October 28, 2022, did you take
14 that seriously when you received it?

15 MR. KOZOLCHYK: Absolutely.

16 MR. YEARICK: Did you make any
17 special procedures to make sure that you
18 complied with it in your office?

19 MR. KOZOLCHYK: My firm manager and
20 I have been trying to look at everything
21 that comes in. If something was missed
22 it is because we both missed it.

23 MR. YEARICK: Did you view the terms
24 of that order as optional or mandatory?

25 MR. KOZOLCHYK: Mandatory.

1 MR. YEARICK: And as part of
2 complying with that and specifically the
3 reporting requirements, would you view a
4 judge noting that you had missed,
5 repeatedly missed deadlines on behalf of
6 a client, would that qualify to you as
7 something that the order was describing
8 unprofessional misconduct by you?

9 MR. KOZOLCHYK: Yes.

10 MR. YEARICK: So in the Reddish
11 case, there's actually -- what Mr. Hearon
12 sent you this morning was a September 7,
13 2023 order by Judge Williams.

14 Are you familiar with that order?

15 MR. KOZOLCHYK: Yes.

16 MR. YEARICK: Have you read it today
17 since it was sent to you?

18 MR. KOZOLCHYK: Only a paragraph or
19 two of it today. I read it before when
20 it came in. But today, I read a
21 paragraph or two of it.

22 MR. YEARICK: Is it fair to say that
23 based on the language used in that order,
24 Judge Williams was refusing to vacate an
25 earlier order of hers that dismissed the

1 case based on the failure to prosecute?
2 Is that a fair description of that order?

3 MR. KOZOLCHYK: Yes.

4 MR. YEARICK: In that order, she
5 specifically notes numerous actions that
6 plaintiff -- and you were plaintiff's
7 counsel in that case, right?

8 MR. KOZOLCHYK: Yes.

9 MR. YEARICK: That plaintiff could
10 have taken to prosecute the case to deal
11 with any uncertainty about deadlines, to
12 move for clarification, all things that
13 you could have done for counsel of
14 Reddish in that case, right?

15 MR. KOZOLCHYK: Are you asking me
16 what the court order says?

17 MR. YEARICK: I'm asking you what
18 Judge Williams wrote in her order were
19 things -- were items that a plaintiff
20 could have -- actions that the plaintiff
21 could have taken in that case so that it
22 wouldn't have been dismissed against the
23 plaintiffs.

24 Do you remember Judge Williams
25 describing those type of actions that you

1 could take?

2 MR. KOZOLCHYK: I would like --
3 before I answer that, I would like to
4 read the order again. I don't want to
5 take the committee's time to do that, but
6 I have the order in front of me now.

7 MR. YEARICK: Okay. Why don't you
8 take a look at it. It's the first page
9 of the Westlaw Reporting. It's the
10 second column, right-most column, the
11 last paragraph on that page. It's
12 actually highlighted on the version that
13 was pulled up for you on the screen.

14 MR. KOZOLCHYK: Can you scroll down,
15 please? Up a little bit more. There you
16 go.

17 That presupposes that I had
18 knowledge that there was an issue. From
19 my vantage point, the case got
20 transferred. There was a docket entry,
21 an ECF entry, that said that the
22 deadlines were terminated, and I had
23 reviewed other cases that had occurred at
24 the same time, other cases transferred to
25 Judge Williams, and in those cases she

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1 said -- she set a status conference as a
2 first thing to get the case set for her
3 deadlines. That did not occur in this
4 case. I was unaware that there was an
5 issue brewing that would cause, without
6 any notice, the case to just get
7 dismissed for lack of prosecution. After
8 the case was transferred to her, I didn't
9 get any prior notice and the case was
10 dismissed for lack of prosecution. I did
11 not know there were any of these problems
12 brewing. I didn't know there were
13 deadlines being missed. I thought when
14 it was transferred and the ECF entry said
15 that the deadlines were terminated that
16 she was going to set new deadlines that
17 we all had to comply with.

18 MR. YEARICK: Mr. Kozolchyk, I
19 understand your arguments, but Judge
20 Williams rejected all those arguments,
21 right?

22 MR. KOZOLCHYK: Yes.

23 MR. YEARICK: And so, when you're
24 sitting there on September 7, 2023,
25 you've got an order from Judge Williams

1 that says, "Hey, plaintiff's counsel, you
2 were unprofessional because you didn't do
3 certain things you should have. You
4 should have complied with different
5 deadlines. You didn't comply with them.
6 I'm dismissing your client's case. And
7 by the way, your client's statute of
8 limitations is over." That's something
9 that didn't occur to you to report to the
10 committee?

11 MR. KOZOLCHYK: It didn't occur -- I
12 mean, I should have reported it.

13 MR. YEARICK: I'm trying to
14 understand, Mr. Kozolchyk, why that
15 didn't occur to you to report that to the
16 committee at that time when you received
17 this order. Can you explain that in any
18 way to me?

19 MR. KOZOLCHYK: It didn't register
20 to me and it didn't register to my firm
21 manager. I'm not disputing that I should
22 have reported it. I absolutely should
23 have reported it. It didn't even occur
24 to us.

25 MR. YEARICK: I'm not asking you

1 about your firm manager. I'm asking
2 about you.

3 When you read this order -- did you
4 read it when it came in?

5 MR. KOZOLCHYK: Yes.

6 MR. YEARICK: Were you concerned by
7 it?

8 MR. KOZOLCHYK: Very much so.

9 MR. YEARICK: You actually took an
10 appeal of the 11th Circuit, right?

11 MR. KOZOLCHYK: Right. But then
12 after I discussed with my client, we
13 decided not to proceed on that.

14 MR. YEARICK: Did you send this
15 order to your client?

16 MR. KOZOLCHYK: I discussed it with
17 my client.

18 MR. YEARICK: You didn't send the
19 text of this order to your client?

20 MR. KOZOLCHYK: No. I don't usually
21 do that in my cases.

22 MR. YEARICK: Did you describe the
23 reasons that Judge Williams ruled against
24 you to your client?

25 MR. KOZOLCHYK: Yes.

1 MR. YEARICK: What did you tell your
2 client about that?

3 MR. KOZOLCHYK: I explained what the
4 substance of the order was.

5 MR. YEARICK: Did you explain that
6 the judge was blaming your inaction and
7 the lack of prosecution of the case as
8 the reason for dismissing the case?

9 MR. KOZOLCHYK: Yes.

10 MR. YEARICK: In those frank of
11 words?

12 MR. KOZOLCHYK: I believe so.

13 No one has worked harder on this
14 case than me. No one has done more in
15 this case for my client than me. And I
16 had to -- this case took so much
17 litigation. What happened was really...

18 MR. YEARICK: Judge Williams
19 describes it as a period of inactivity,
20 depending on how you read the order,
21 between 18 and 24 months of inactivity of
22 prosecuting this case. Is that incorrect
23 in your view?

24 MR. KOZOLCHYK: That's missing some
25 very important context. May I provide

1 that context?

2 MR. YEARICK: Sure.

3 MR. KOZOLCHYK: This case was set to
4 go to trial before. The defendants said
5 they were going to file bankruptcy. I
6 agreed therefore to stay the case pending
7 that. That was a complete
8 misrepresentation by defense counsel.
9 They never did file bankruptcy. I had
10 put a lot of time and research in this
11 case before that time. We wanted to
12 still move forward with the case at the
13 time. I since discussed it with my
14 client and he doesn't want to move
15 forward anymore and frankly neither do I.
16 I put a lot of blood, sweat and tears in
17 that case. I worked very hard on that
18 case.

19 MR. YEARICK: I understand and I
20 have no reason to doubt at the moment
21 your representation of the work that you
22 put into the case. What does that have
23 to do with there not being record
24 activity or prosecution for the 18 to 24
25 months during the life of the case?

1 MR. KOZOLCHYK: Because that was
2 stayed for the defendants to file
3 bankruptcy, which they never did.

4 MR. YEARICK: There was also no
5 update given after the initial update
6 about the bankruptcy to either of the
7 judges who had that case for that 18 to
8 24 months, right?

9 MR. KOZOLCHYK: Correct.

10 MR. YEARICK: You talked about
11 failure to disclose this order of
12 September 7, 2023. Were there any other
13 orders, to your knowledge, in the Reddish
14 case where the judge found that there was
15 a repeated failure to adhere to deadlines
16 set by the court by your client and you?

17 MR. KOZOLCHYK: I know there was a
18 notice of lack of prosecution before. I
19 don't recall if that occurred within the
20 reporting period of the order for which
21 this committee is here for. I would need
22 to look it up and see, so I don't know if
23 that was part of this or not. I mean, I
24 guess I can look right now.

25 MR. YEARICK: I'll help you out with

1 that.

2 Mr. Kozolchyk, you understood when
3 you were here before in front of the
4 committee that the committee had a range
5 of options in terms of discipline that we
6 could consider, right?

7 MR. KOZOLCHYK: Yes.

8 MR. YEARICK: You understood that it
9 was a wide range of options that we could
10 consider, correct?

11 MR. KOZOLCHYK: Yes.

12 MR. YEARICK: And the committee has
13 made this report and recommendation and
14 it came up with a reporting period of 12
15 months for you, correct?

16 MR. KOZOLCHYK: Yes.

17 MR. YEARICK: That was lower than
18 some of the other disciplinary actions we
19 could have taken, right?

20 MR. KOZOLCHYK: Yes.

21 MR. YEARICK: Did you think it was
22 important to make sure that you complied
23 with the reporting period even though you
24 thought it was vague in some ways, but
25 specifically as to court orders, didn't

1 you think that was important?

2 MR. KOZOLCHYK: Yes.

3 MR. YEARICK: So what I wanted to
4 know is why, in addition to the September
5 7th order, there's actually referenced in
6 this order itself, this September 7th
7 order, is a January 25th order, docket
8 entry 113 that says -- it's Judge
9 Williams again -- it says, quote, "Having
10 reviewed the record in this case, the
11 court finds that the parties have
12 repeatedly failed to adhere to deadlines
13 set by the court and plaintiff has failed
14 to prosecute this case."

15 That wasn't reported to this
16 committee either, was it?

17 MR. KOZOLCHYK: No.

18 MR. YEARICK: That was January 15th,
19 2023, what, three months after the order,
20 almost three months after the order on
21 the report and recommendations? Is that
22 about right?

23 MR. KOZOLCHYK: I trust your math on
24 that.

25 MR. YEARICK: What I'm trying to

1 understand is, not even three months
2 after the order on report and
3 recommendations came out, you get this
4 order from Judge Williams and no red
5 flags go off in your head?

6 MR. KOZOLCHYK: Not on this case,
7 but I reported on a lot of the other
8 cases.

9 MR. YEARICK: I understand what you
10 reported about. I read through the
11 stuff.

12 Not these orders from Judge
13 Williams, right?

14 MR. KOZOLCHYK: I missed it and I
15 apologize. I don't gain anything from
16 missing -- from missing it. I'm not
17 trying to hide anything.

18 MR. YEARICK: Do you know that this
19 September 7th order, the copy that was
20 sent to you this morning, was actually
21 reported on Westlaw, right?

22 MR. KOZOLCHYK: I mean, I don't know
23 if it was reported in Westlaw or not. I
24 don't monitor that at all, what's been
25 reported on Westlaw or not.

1 MR. YEARICK: So you didn't check
2 Westlaw to determine if there were any
3 orders out there in the last 12 months
4 that you should be telling this committee
5 about?

6 MR. KOZOLCHYK: No, honestly. The
7 approach I had taken, as something comes
8 in, try to see if it's something that
9 needs to be reported. I'm not looking on
10 Westlaw to see if something pertaining to
11 me should be reported.

12 MR. YEARICK: Based on the materials
13 that you reported to the committee, there
14 are a number of -- I will just say they
15 are accusations by opposing counsel,
16 right, about actions that you took in
17 their cases; is that right?

18 MR. KOZOLCHYK: Yeah, I guess so.
19 If we can go through them, I'd be happy
20 to respond to specific instances.

21 MR. YEARICK: You already have to
22 certain questions and I'm sure we've read
23 the remainder.

24 What I want to know is, you said you
25 were broadening your searches in terms of

1 what you wanted to report to the
2 committee, right?

3 MR. KOZOLCHYK: Yes, I didn't want
4 anything to fall through the cracks.

5 MR. YEARICK: And so you sent the
6 committee all these materials about
7 accusations that were made against you by
8 opposing counsel, correct?

9 MR. KOZOLCHYK: Yes.

10 MR. YEARICK: But you didn't report
11 these orders from judges in the Southern
12 District of Florida; is that correct?

13 MR. KOZOLCHYK: I missed them, yes.

14 MR. YEARICK: Is there anything else
15 you missed?

16 MR. KOZOLCHYK: I really hope not.
17 I really, really hope not.

18 MR. YEARICK: What did you do to
19 search for orders from the Southern
20 District of Florida regarding your
21 conduct in the last 12 months, other than
22 just watching ECF filings as they came
23 in? Did you do anything?

24 MR. KOZOLCHYK: In all honesty, I
25 thought really hard, because I thought --

1 before the notice of this hearing, I
2 didn't think there was even an issue.

3 Once I got the notice of the
4 hearing, I said, okay, maybe something
5 has been missed, think about any possible
6 thing that could have been missed. And I
7 thought of those three cases.

8 MR. YEARICK: Sir, you have a lot of
9 cases in the Southern District of
10 Florida, right?

11 MR. KOZOLCHYK: Yes.

12 MR. YEARICK: Just a rough guess.
13 I'm not asking you for your sworn
14 testimony about the number, but over a
15 hundred pending cases?

16 MR. KOZOLCHYK: Not over a hundred
17 pending, no. I can look it up right now
18 and tell you.

19 MR. YEARICK: No, just your best
20 estimate right now.

21 MR. KOZOLCHYK: Between 20 and 50.
22 I can give you an exact number if you
23 give me a minute.

24 MR. YEARICK: I don't really need an
25 exact number to make my point.

1 Mr. Kozolchyk, do you rely on your
2 memory as the sole source of trying to
3 determine whether you're in compliance
4 with court orders?

5 MR. KOZOLCHYK: No, we scheduled
6 deadlines, but this is any problematic
7 conduct, so I mean, I don't know -- I'm
8 not complaining about the mountain of
9 having to comply with it. I'm trying the
10 best I can to comply with it. But if
11 you're suggesting there's a black and
12 white foolproof system that I could have
13 followed to ensure compliance, I am
14 unaware of that, other than reading the
15 orders as they come in and making sure,
16 if they need to be reported, to report
17 them.

18 MR. YEARICK: Do you have a document
19 data base that you're able to search for
20 pleadings and orders and cases?

21 MR. KOZOLCHYK: No. I have
22 something that searches through the
23 files.

24 MR. YEARICK: What do you mean
25 "searches through the files"?

1 MR. KOZOLCHYK: Like a more robust
2 version of Windows search.

3 MR. YEARICK: Did you use that to
4 try to determine whether you are in
5 compliance with your reporting
6 requirements?

7 MR. KOZOLCHYK: Yes. And if you do
8 a search for sanctions, a lot of court
9 orders threaten sanctions, so a lot of
10 things come just in standard orders.
11 It's not that sophisticated that it can,
12 you know, read if someone is critiquing
13 me. I know with AI, you can like read --
14 the computers read stuff and
15 substantively analyze them, but that's
16 not what I have. Mine's more like a
17 keyword search so a lot of keywords can
18 trigger false positives.

19 MR. YEARICK: If you were to search
20 for "sanction" -- the word "sanction"
21 does appear in the Reddish decision by
22 Judge Williams on September 7th, 2023,
23 right?

24 MR. KOZOLCHYK: Right. It's in many
25 judges' standard orders that "failure to

1 comply with any of the requirements of
2 this order may result in sanctions," so
3 it's part of the standard order in a lot
4 of judges' orders.

5 MR. YEARICK: My last question is, I
6 think some of your emails to the chair
7 and some of your discussions here in
8 response to questions from Mr. Cohen, you
9 referred to the fact that one of your
10 opposing counsel was a former member of
11 this committee, right?

12 MR. KOZOLCHYK: Right.

13 MR. YEARICK: How is that relevant
14 to whether you complied with your
15 reporting requirements?

16 MR. KOZOLCHYK: I felt that if I
17 didn't mention that it would be like I
18 was trying to hide the ball. I feel like
19 I'm trying to not disclose something. It
20 seemed like a detail -- for me not to
21 mention it, it's like I'm trying to hide
22 something.

23 MR. YEARICK: What would you be
24 trying to hide in that situation?

25 MR. KOZOLCHYK: I didn't want this

1 committee to think that I'm trying to
2 hide anything.

3 MR. YEARICK: I have no further
4 questions. I will turn it back to the
5 chair.

6 MR. HEARON: Seth?

7 MR. MILES: Thanks, Bill, just a few
8 questions.

9 You testified earlier that, I guess,
10 your particular practice area has a
11 tendency to be pretty contentious; is
12 that correct?

13 MR. KOZOLCHYK: Very much so.

14 MR. MILES: And in reading some of
15 the emails that you forwarded to the
16 committee -- and tell me if I'm
17 misreading this -- it seems to be your
18 belief that some of the things filed or
19 the allegations made against you are
20 tactical by your adversary counsel.

21 Is that a fair understanding of what
22 you believe?

23 MR. KOZOLCHYK: Very much so, yes.

24 MR. MILES: Is that something that
25 has historically happened in the practice

1 to you specifically or do you think
2 that's something that's happened
3 subsequent to the first time you came
4 before this committee?

5 MR. KOZOLCHYK: I think that's
6 always been there in these cases. What's
7 different after everything that's been
8 going on with this committee is that I'm
9 not engaging in it. I'm not
10 reciprocating the vitriol, the toxicity.
11 I'm sticking to the issues as best I can
12 and not providing oxygen to the personal
13 attacks against me.

14 MR. MILES: I appreciate that and
15 that's obviously a good thing.

16 What I'm trying to understand is
17 whether you think that there's been some
18 sort of either increase in the
19 allegations that have been made against
20 you or change in the tenor of those
21 allegations as a result of the reporting
22 requirements that you have to this
23 committee, or do you think that's sort of
24 part and parcel of the line of work you
25 ended up in?

1 MR. KOZOLCHYK: I mean, there's
2 definitely the instance of the Keefe case
3 that I am still dealing with even as of
4 last night, where I have the defense
5 attorney referencing the reporting
6 requirements, threatening to disbar me,
7 saying he will seek to disbar me and he
8 will do it for free. So certainly he has
9 weaponized the order and is trying to use
10 it against me as much as he can.

11 If you're suggesting if there are
12 other attorneys who have done the same
13 thing, I can't say for sure. Although
14 certainly he has.

15 MR. MILES: You anticipated my
16 question, which is whether or not that's
17 been an isolated experience for you,
18 meaning whether this singular attorney
19 has threatened to weaponize this order
20 against you or others have specifically
21 referenced the order in making certain
22 allegations or seeking certain
23 concessions from you?

24 MR. KOZOLCHYK: Well, and I'm being
25 a hundred percent honest and candid here,

1 okay, I question the motives of Eric
2 Gabrielle as well, but I don't mention
3 him with the same absolute black and
4 white is occurring as I do in the Keefe
5 case.

6 MR. MILES: Did Mr. Gabrielle, or
7 anyone else for that matter, ever
8 specifically reference the order and your
9 reporting requirements to you?

10 MR. KOZOLCHYK: Only the Keefe case.

11 MR. MILES: So what I'm ultimately
12 trying to understand, to give you a
13 little bit of a preview, is you work in
14 an area of litigation that you described
15 as contentious, and from an outsider's
16 perspective that seems pretty accurate,
17 and you have this pending order that at
18 least one of your opposing counsel, in
19 your opinion, has weaponized -- and
20 perhaps others have, maybe not as
21 exclusively, right?

22 MR. KOZOLCHYK: Right.

23 MR. MILES: And the best that I have
24 heard thus far, the most detail I have
25 heard thus far in your steps that you

1 have taken to comply with the order are
2 you and -- I can't remember if we refer
3 to them as a firm manager or case
4 manager, someone else --

5 MR. KOZOLCHYK: Firm manager.

6 MR. MILES: Firm manager.

7 Tell me what, if any, additional
8 procedure exists within your firm, other
9 than when an order or presumably a motion
10 comes in and you and/or -- you and your
11 firm manager reviewing it to see if it's
12 something that needs to be reported.

13 MR. KOZOLCHYK: Are there any
14 additional steps? Other than us
15 reviewing it, I mean, I honestly don't
16 know. If there's something obvious out
17 there that you guys know I should have
18 been doing, please let me know. I don't
19 know of any other system or procedure
20 that exists or that I should be doing
21 other than reading what comes in, and if
22 I believe it's within the scope of the
23 order, then reporting it. I have a
24 second set of eyes. What I am saying is
25 I have a second set of eyes, besides my

1 own, doing it, so I thought that was a
2 good feature.

3 MR. MILES: I get that and that's
4 why I wanted to know whether there was
5 anything extra.

6 I guess what confuses me a little
7 bit is that the outside, it looks like
8 we're reviewing a total of somewhere
9 between 10 and 14 allegations made
10 against you in approximately an eight
11 month period of time, right?

12 MR. KOZOLCHYK: Okay. If you're
13 looking at the number and you're
14 thinking, "Boy, what is wrong with this
15 guy, why is this happening," I don't
16 really view it like that, because this
17 litigation is so contentious. What I
18 would be looking at is what has Elliot
19 actually done and not done? Has my
20 conduct actually been bad? I am telling
21 you I don't -- I don't reciprocate in the
22 vitriol anymore. I am very, very focused
23 on the issues in every case. If the
24 other side -- you know, like the motion
25 to dismiss that I reported where he said,

1 "Plaintiff is trying to mislead the
2 court" -- if I can have like two minutes
3 to give some more context to give this
4 example.

5 He made that statement. I will also
6 say there's two interstate commerce
7 requirements, one for enterprise and
8 individual coverage, separately
9 interstate commerce requirements. He
10 cited a court opinion that literally had
11 subheadings, individual coverage,
12 enterprise coverage. Within those
13 subheadings of those orders, there are a
14 few requirements. One of them is
15 interstate commerce, which are different
16 for each one. He accused me of trying to
17 -- he accused the plaintiff of trying to
18 mislead the court because of the
19 interstate commerce requirement for
20 enterprise coverage, but then he cited
21 the interstate commerce requirement
22 within the individual coverage section
23 that was explicitly identified in the
24 courts in that other authority that he
25 cited in. This is under individual

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1 coverage. He's arguing the wrong
2 standard for interstate commerce and then
3 saying I am trying to mislead the court
4 by citing what was actually the correct
5 standard.

6 And so that is one example. If you
7 count that, that's just wrong. It's just
8 not correct. I was properly citing the
9 right order. He is actually the one
10 trying to mislead the court and I show
11 that in my response. So I mean if we're
12 going to -- if the committee is just
13 going to look at the number of reports
14 without going deeper into their
15 substance, I mean, any attorney can say
16 anything without regard of whether it's
17 right or wrong and it's just another
18 attack against me.

19 MR. MILES: Here is the disconnect
20 for me and perhaps this gets to the heart
21 of the matter, at least as I see it at
22 the moment.

23 You seem very anxious to litigate
24 the merits of these accusations against
25 you and you may have good reason for

1 that. You may be right. You may be
2 wrong. You clearly feel that you're
3 right and I understand that. But I don't
4 think that's what we're here for today.
5 What we are here for, at least as I
6 understand it, irrespective of the merits
7 of the accusations against you, you had a
8 requirement and a duty to report them to
9 this committee. And what is clear is
10 that there is some relatively large
11 subset of documents containing these
12 allegations that didn't make its way to
13 this committee. One possibility is that
14 you don't have processes in place to
15 ensure that each and every one of these
16 actually makes its way to the committee,
17 and that's a possibility, although that
18 seems unusual to me because although 10
19 to 14 in eight months seems like a large
20 number, it's certainly not an
21 insurmountable number that you and your
22 manager wouldn't be able to review and
23 produce to this committee.

24 Another possibility is for whatever
25 reason you thought you only had to

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1 forward the allegations or accusations
2 that had some degree of merit or that you
3 didn't believe were completely and wholly
4 frivolous, and that's what you forwarded
5 to this committee, or something else, and
6 that's what I'm trying to get a handle
7 on, because I don't know what it is and
8 I'm curious from your perspective what
9 explains it.

10 MR. KOZOLCHYK: I certainly didn't
11 think it was only those that I agreed
12 with I had to forward. I knew I had to
13 forward everything.

14 I'm being as honest as I can as to
15 the reason why they weren't forwarded.
16 I'm not saying that these are good
17 reasons. I'm saying they are the honest
18 reasons.

19 In the case with the motion to
20 dismiss, he said, "Plaintiff is trying to
21 mislead the court." I thought well,
22 that's not me personally. But then upon
23 further recollection after the notice of
24 hearing, I'm like, you know how that can
25 be interpreted and I need to cast as

1 broad a net, so I reported it. I'm not
2 saying that's a good reason. I'm saying
3 that's an honest reason why I didn't
4 report it at the time. I certainly
5 wouldn't make that mistake again.

6 The second one in the Santiago case
7 with Eric Gabrielle, I thought the way he
8 chose his wording was sufficiently in the
9 abstract that it didn't trigger my
10 reporting requirement. Upon further
11 reflection when I got the notice of
12 hearing, I'm like, let me cast this broad
13 net as possible, so let me include that
14 as well.

15 And the third case, the motion for
16 sanctions, it definitely should have been
17 reported. It didn't register, and I
18 think what I'm trying to psychoanalyze
19 myself, "Well, why didn't it register,
20 Elliot?" It's because from my own
21 psychoanalysis, why wouldn't that cause
22 me to want to report it -- not want to
23 report it, to register, "Oh, this is
24 something that I need to report," it's
25 because from the beginning of the case, I

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1 didn't know this attorney, the first
2 communication was a motion for sanctions.
3 It was entirely focused on the issue of
4 the exemption. It was so much about the
5 issues of the case and not about me
6 personally that my brain didn't make a
7 connection, this is something about me
8 that I need to report. It was about the
9 exemption was -- whether the case was
10 frivolous because an exemption applied,
11 and so that's the honest reason why it
12 didn't occur to me to report it. That's
13 the truth. That's really, really why I
14 didn't report it. It didn't register,
15 but again when I got the notice of the
16 hearing and I thought what is out there,
17 and that came to my mind, and so I
18 reported that, too.

19 And then Reddish, I completely
20 missed. Completely, completely. Before
21 the email that I got from Mr. Hearon
22 earlier today, it was not even on the tip
23 of my tongue. Those are the real
24 reasons. Those are the real reasons why
25 those were not reported.

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1 MR. MILES: So if I'm understanding
2 you correctly, Reddish is an oversight, a
3 mistake, a moment of forgetfulness. The
4 other three, you came into your office,
5 you and your manager reviewed them, you
6 looked at them with the order in mind and
7 you interpreted those particular briefs
8 for various different purposes not
9 requiring reporting to the committee, but
10 you went through that thought process?

11 MR. KOZOLCHYK: Two of them, I went
12 through the thought process. Again, the
13 Martinez case where they moved for
14 sanctions because the exemption applied.
15 That again was so not personal to me, it
16 didn't even trigger in my head. So the
17 Martinez one as well did not even
18 register.

19 The Santiago case with Eric
20 Gabrielle and the motion to dismiss for
21 attempting to mislead the court, that did
22 register in my brain and with my firm
23 manager and we thought, "Well, the motion
24 to dismiss is talking about plaintiff,
25 it's not plaintiff counsel." And in the

1 Santiago case, I thought it was
2 sufficiently abstract and I was
3 incredulous as to believe that a member
4 of the committee would have been -- the
5 accusations were really baseless.

6 MR. MILES: For purposes of today,
7 at least from my perspective, what you're
8 saying is the orders came in, I'm sorry,
9 the briefs came in, the motions came in,
10 you and your firm manager, aware of the
11 order, undertook the analysis and based
12 upon the analysis that you undertook at
13 the time, believed they were not
14 necessarily required to be reported. In
15 retrospect, perhaps he would have chosen
16 or analyzed it differently?

17 MR. KOZOLCHYK: You are ultimately
18 correct on those two and I did -- upon
19 further reflection, I did report them.

20 MR. MILES: Thank you.

21 MR. HEARON: Bridget?

22 MS. BERRY: Sorry about that.

23 My name is Bridget Berry and I have
24 a question about the underlying import of
25 the order. You have mentioned your

1 office manager, and so I'm interested in
2 knowing who else you have at your law
3 firm in terms of hiring and handling the
4 underlying cases. Because there seems to
5 be a repetitive theme of you kind of
6 doing things at the last minute and not
7 complying with the court orders. So I'm
8 interested in knowing what are the
9 processes that you have in place in order
10 to comply with your obligations to the
11 clients.

12 In terms of -- for example, I'll
13 give you two specific examples. One of
14 the examples of the information you
15 recently provided was that there had been
16 a dump of discovery right before trial
17 and then there was an issue relating to
18 the answers to interrogatories and you
19 not having the answers to interrogatories
20 verified, even though they had been
21 served back in April and here it was
22 September, those kinds of things.

23 What are the processes you have in
24 place to be able to comply with discovery
25 obligations and obligations to keep the

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1 cases moving forward, that kind of thing?

2 MR. KOZOLCHYK: Okay. The quote
3 "dump before trial" was documents
4 produced before depositions.

5 MS. BERRY: No, no, I'm not
6 disputing that case. I'm just interested
7 in what are the processes that you have
8 generally to make sure that you're
9 keeping cases moving forward and that you
10 are complying with deadlines.

11 MR. KOZOLCHYK: Every deadline is
12 calendared and we review the deadlines on
13 a daily basis and forward -- obviously
14 forward deadlines and we manage my time
15 to address them as best as we can. If
16 something needs more time, we move for an
17 extension of time.

18 I don't want to get into the weeds
19 if you don't want me to on those two
20 examples you gave, but I would like to
21 discuss them if I may. But if you guys
22 are not interested in hearing that, then
23 I guess I won't.

24 MS. BERRY: I'm more interested in,
25 you know, for example, what is your

1 process on conferral? I read a number of
2 times that people said, you know, they
3 tried to reach out to you, they tried to
4 confer with you, as we're all obligated
5 to do, under the rules of the Southern
6 District, and that they couldn't get in
7 touch with you.

8 What is your practice? Do you
9 return calls within 12 hours, 24 hours,
10 what do you do? What is your process?

11 MR. KOZOLCHYK: I will return calls
12 when I'm available, when I can, as soon
13 as I can. I've had several -- and you
14 guys would not be privy to this, because
15 it's not like you guys have all my
16 emails, but there are many times when I
17 get emails from opposing counsel that
18 say, "Hey, when can we schedule a time to
19 talk," and I'm like, "Call me right now.
20 We can talk right now." I've done that
21 many times.

22 I try to respond as soon as I can
23 when I'm available. There are days when
24 literally every moment of the day one
25 thing finishes and a whole other thing

1 starts. I get a phone call and then I
2 get an email and then a filing comes in.
3 It's just nonstop every moment of the
4 day.

5 We try to respond to everything as
6 best we can. If we need an extension of
7 time, we move for an extension of time.

8 MS. BERRY: When you say "we," do
9 you have other attorneys that work with
10 you?

11 MR. KOZOLCHYK: No. My firm manager
12 helps manage my deadlines. Not
13 necessarily do them, but manage me in
14 managing the deadlines.

15 MS. BERRY: There are no other
16 attorneys in your office?

17 MR. KOZOLCHYK: Correct.

18 MS. BERRY: Thank you.

19 MR. HEARON: Jennifer?

20 MS. WAHBA: Yes. I just have one
21 pretty quick question.

22 So you sent what's titled Exhibit A,
23 Draft Email in the Peter's Plumbing case.
24 Is there a reason why the email says sent
25 on that date even though it was a draft

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1 that supposedly was not sent?

2 MR. KOZOLCHYK: I'm telling you
3 right now it was not sent. When I go
4 into Outlook, I went and put up that
5 draft and I printed it to PDF and that's
6 how it came out. I'm representing to you
7 I did not send it. It was an unfinished
8 draft. The reason I included it was to
9 show you that I thought I had sent it on
10 that date even though it was not sent.
11 Just like I created the transfer link for
12 the documents on that date. But it was
13 in the email that I thought was sent --
14 it was not sent.

15 What must have happened -- I'm
16 speculating, but probably what happened
17 was I was in the middle of working on it,
18 something else came up that demanded my
19 immediate attention and in my mind I had
20 thought I sent it and it never got sent.

21 MS. WAHBA: I tried this myself.
22 When you send -- if it's just a draft
23 email and you try to print it, it would
24 not say sent on a certain date, right?
25 Are you representing that it was a draft

1 but it was also not sent?

2 MR. KOZOLCHYK: It was an unfinished
3 draft so the email was typed, saved, it
4 was not sent. I don't know why Outlook
5 says sent on there. I'm not pretending
6 that it was sent. From the beginning
7 that I disclosed it to you, to Mr.
8 Hearon, I said it was a draft that did
9 not get sent.

10 MS. WAHBA: And then the Dropbox
11 link, it says, "Sent 155 days ago" on the
12 transfer. I don't have that Dropbox
13 transfer so you copied the link into the
14 email, but would that also say sent if it
15 actually was not sent to someone?

16 MR. KOZOLCHYK: Right, the link was
17 generated. It was generated that long
18 ago and then I copied it on the email.
19 So I took all these steps to create, you
20 know, this evidence 155 days ago, only to
21 not actually do it for this masterful
22 plan to hide the bong until the day
23 before the deposition, or I thought it
24 was sent and it didn't get sent. And
25 that's what I'm trying to convey by

1 saying that I literally created the
2 links. Because the motion makes it seem
3 like I'm doing this all strategically and
4 that's simply not the case. I'm
5 operating in good faith. I generated
6 that link 155 days from the date that I
7 reported it. I was working on the emails
8 and for whatever reason that particular
9 email did not get sent with that link
10 inside of it. The link was generated at
11 that time and the draft was generated at
12 that time.

13 MS. WAHBA: And then the Britt's
14 Bow Wow case, I just want to know if you
15 have an explanation for why in the notice
16 of compliance you represented that the
17 discovery was served and it actually was
18 not verified at that time.

19 MR. KOZOLCHYK: Because it -- I'm
20 not trying to defend what happened. I
21 will never file another notice of
22 compliance saying discovery was served if
23 it included interrogatories that were
24 unverified. That will never happen
25 again. I did not believe that because

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1 they were unverified it did not mean I
2 did not send out the discovery. We filed
3 discovery. I wasn't able to get ahold of
4 my client who moved to Rhode Island at
5 the time, so she was not local here, so I
6 was not able to get her to sign. But we
7 did send it out and I believed in good
8 faith that the notice of compliance was
9 complying with that, that we sent it out.

10 I will never make that mistake
11 again. I will include a footnote that
12 makes it very clear that the
13 interrogatories are unverified so there's
14 no confusion. I will obviously do
15 everything I can to ensure that the
16 interrogatories are verified.

17 MS. WAHBA: Okay. That's all I
18 have. Thank you.

19 MR. HEARON: Just for the record,
20 Jennifer, that case you were just talking
21 about was the Keefe case, right,
22 K-E-E-F-E?

23 MS. WAHBA: Yes, Keefe versus
24 Britt's Bow Wow.

25 MS. SMITH: Thank you very much.

1 Good afternoon, Mr. Kozolchyk. My
2 name is Alison Smith.

3 My question was -- and I think
4 Da'Morus asked my question earlier, but
5 unless I wasn't listening carefully, and
6 I think I was, I don't believe that you
7 answered it. You said a lot of things,
8 but I don't think you directly answered
9 the question.

10 What method, and he said
11 "processes," but what method do you use
12 to notify, to be able to notify us, the
13 committee, when there's an issue that has
14 been -- that would bring the language of
15 the order into issue? What method do you
16 use? How do you figure out, "Okay, this
17 is what I'm going to tell the committee
18 or I need to let the committee know"?
19 What method do you use?

20 MR. KOZOLCHYK: I read the filings
21 as they come in, as does my firm manager,
22 and if something catches our attention
23 that might be within the scope of the
24 order, we report it.

25 MS. SMITH: I don't -- I've been

1 practicing for just shy of two decades
2 now and I admittedly do not practice in
3 your area and I actually don't litigate
4 and I haven't for a decade, but it's sort
5 of eyebrow raising and alarming to me in
6 terms of sanctions, motions for sanctions
7 being filed, more than one being filed,
8 period, for the entirety of your
9 practice, but I'm taking your word for it
10 that this area just tends to lend itself
11 to that sort of behavior. But if you
12 have the type of order that was rendered
13 in this case, why would you not paint it
14 with a broad brush? I know you said it's
15 vague, the language is vague, but
16 wouldn't you want to err on the side of
17 caution more so than being conservative
18 in what you share?

19 MR. KOZOLCHYK: I did report the
20 order in Keefe, right, Mr. Hearon, I
21 believe?

22 MR. HEARON: Yes.

23 MR. KOZOLCHYK: So that notice of
24 compliance where it was unverified, and
25 because of the unverified, I was

1 sanctioned, and I tried to get it
2 verified, but I couldn't get ahold of my
3 client and coordinate it in time, I
4 reported that to Mr. Hearon.

5 I explained why the things I didn't
6 report at the time, I ended up reporting
7 later. But I tried to be much more
8 liberal -- and that's how I came up with
9 those other three cases, so I wasn't
10 trying to hide anything. It didn't occur
11 to me. I felt two of those were outside
12 the scope. The third didn't even
13 register. When I got the notice of
14 hearing, I thought long and hard about --
15 as broad as possible, is there anything I
16 missed, and I came up with those three.

17 Reddish, until I got the email from
18 Mr. Hearon today, was not even on my
19 radar.

20 MS. SMITH: So to that point about
21 the case where you said it referenced the
22 plaintiff, your perception is that if
23 something references the plaintiff, it's
24 not really talking about us even though
25 we're fighting on behalf of our clients

1 and residing in their shoes? You don't
2 see that as being the same thing?

3 MR. KOZOLCHYK: I see it now. I saw
4 it when I reported it after I got the
5 notice of hearing. At the time that the
6 motion was filed that was my thought
7 process as to why I did not report it at
8 the time. But then I cast a much broader
9 net when I got the notice of hearing and
10 I included that. But at the time I'm
11 trying to decide is this about my --
12 Elliot's unprofessional or problematic
13 conduct, and it said the plaintiff, so I
14 thought that was a distinction to be
15 made. I stopped making that distinction
16 and I reported it when I got the notice
17 of the hearing.

18 And certainly if there are future
19 reporting requirements, that distinction
20 will cease to exist. Anything pertaining
21 to the plaintiff, I will include that
22 within the scope of me.

23 MS. SMITH: Because I mean, we
24 are -- we are the parties, right? We are
25 the ones that are filing everything.

1 They may give you the information but
2 it's you, we are accountable.

3 Again, to that point, who mentors
4 you? Do you have a mentor? Do you have
5 a person that you work with, outside of
6 your office manager, whom I'm assuming is
7 not an attorney, right?

8 MR. KOZOLCHYK: She is not an
9 attorney.

10 MS. SMITH: Not an attorney.

11 So which attorney are you sort of
12 aligned with, affiliated with who you can
13 throw ideas off of, even things like this
14 where it doesn't fit within the scope,
15 you're speaking to somebody who is not an
16 attorney. My sister is not an attorney.
17 She is a physician. I would not go to
18 her, even though she's smart, to ask her
19 questions about whether or not something
20 was legally to be reported based on an
21 order, because her eyes would cross over
22 reading it.

23 Who do you have as an attorney,
24 whether it's within a bar association,
25 some sort of voluntary association that's

1 affiliated with attorneys or just a
2 friend, who do you have that you could go
3 to for this type of thing?

4 MR. KOZOLCHYK: I mean, I have a
5 couple of colleagues, but it's not that
6 form of relationship and it never
7 occurred to me to consult with them on
8 the particular issue of the plaintiff,
9 whether I should have reported that.

10 I did report it later upon further
11 reflection when I cast as broad a net as
12 possible, but -- so I have colleagues
13 that sometimes I have a question I might
14 go to them for.

15 MS. SMITH: I would venture to say
16 that this is vitally important, and this
17 is probably something that we will talk
18 about as a committee, but I want to say
19 to you, since this is probably one of my
20 few opportunities to chat with you, it's
21 vitally, vitally important for you to
22 align with someone who is senior to you
23 who understands the practice and the
24 importance of avoiding these types of
25 situations, particularly because you said

1 that you're in a contentious area of
2 practice, because you're going to
3 repeatedly find yourself in this
4 situation, and I'm not sure where it can
5 go from here, so I would just really,
6 really, really stress the importance of
7 aligning with someone. There are people
8 far more senior to you who are aligned
9 with attorneys who can assist them. I
10 work in a large law firm and we have a
11 ton of resources in the firm, even for
12 people who have been practicing for a
13 long time like myself.

14 The last thing I wanted to say, it's
15 a question but also a statement. You
16 mentioned earlier that you don't have
17 anything to gain, you wouldn't have
18 willfully failed to disclose this
19 important information. But in actuality
20 you do because if you don't disclose it,
21 then you don't have to come before us and
22 have this rather unpleasant experience of
23 having numerous people ask you all these
24 questions which you may find invasive.
25 There is some incentive. It is to your

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1 benefit to not share information with us,
2 so it's not necessarily 100 percent
3 accurate in my viewpoint that you don't
4 gain anything by not disclosing the
5 information.

6 You don't necessarily have to
7 respond to that. It's not so much a
8 question as it is a statement. But I
9 wanted you to understand because I'm
10 quite sure that other committee members
11 are thinking the same thing.

12 MR. KOZOLCHYK: These filings are a
13 matter of public record, and I certainly
14 don't think that the committee doesn't
15 have the ability to obtain them one way
16 or another.

17 I never for a moment thought, "Oh,
18 if I don't report this, they will never
19 find out." I have always tried to report
20 what was within the scope.

21 I believe my best path in dealing
22 with you all is compliance. That is the
23 approach I am taking. That's what I'm
24 trying to do is comply. I believe that
25 is what will best serve me and serve

1 everybody else. I'm not trying to do
2 anything else other than to comply.

3 MS. SMITH: Thank you. I appreciate
4 it. I don't have any further questions.
5 Thank you.

6 Thank you, Bill.

7 MR. HEARON: Steve, do you want to
8 go next?

9 MR. DAVIS: Sorry about that. Yeah,
10 I don't have any questions. Thank you,
11 Bill.

12 MR. HEARON: Bily?

13 MS. FERNANDEZ: I don't have any
14 questions. Thank you, Bill.

15 MR. HEARON: Andrew?

16 MR. FIGUEROA: No questions. Thank
17 you, Bill.

18 MR. HEARON: Celeste?

19 MS. HIGGINS: I just have a couple
20 of follow-up questions.

21 Mr. Kozolchyk, how many people total
22 do you have working at your office?

23 MR. KOZOLCHYK: Does this include
24 contractors?

25 MS. HIGGINS: Are they independent

1 contractors or are they people that work
2 in your office? I'm not asking for tax
3 purposes. I'm asking how many people are
4 in your office that help you manage your
5 cases or do your investigations or do
6 your research, how many people in your
7 office?

8 MR. KOZOLCHYK: Me and one other
9 person.

10 MS. HIGGINS: What?

11 MR. KOZOLCHYK: In my office are me
12 and one other person. I'm sorry, I have
13 remote workers. Is that including remote
14 workers?

15 MS. HIGGINS: Yeah.

16 MR. KOZOLCHYK: I'm not trying to
17 hide anything.

18 MS. HIGGINS: Let me clarify that
19 now that the world has changed and we all
20 work remotely.

21 How many people are involved in the
22 management of your cases or overseeing
23 your cases or involved in working on your
24 cases either remotely or a person in your
25 office?

1 MR. KOZOLCHYK: Me and one other
2 person work on my cases. That's me and
3 my firm manager. I have other staff that
4 answer the phone and deal with clients,
5 things of that sort.

6 MS. HIGGINS: So you and your firm
7 manager are physically the ones that are
8 mostly there, but there are other people
9 involved in things like, I guess, filing
10 and -- I don't even know that we file
11 anymore, but --

12 MR. KOZOLCHYK: Less than that. I
13 have a remote receptionist contractor. I
14 have two remote receptionist contractors
15 that basically just answer the phone.

16 MS. HIGGINS: In reality, the people
17 monitoring your cases are you and your
18 office manager, that's it? I think you
19 made reference to this person throughout
20 this hearing.

21 MR. KOZOLCHYK: There's one other
22 person who does, again remotely, contract
23 work, does calendaring.

24 MS. HIGGINS: Let's talk about that
25 person for a moment. That calendaring

1 individual, how do they calendar? What
2 are they doing? You said that things
3 come in and you're monitoring dates, and
4 you are monitoring things. Is that
5 person also doing the same thing?

6 MR. KOZOLCHYK: Yes. Well,
7 deadlines, yes. It's much less of a
8 substantive and more what date you need
9 something done by.

10 MS. HIGGINS: How often are you in
11 touch with this person? Is it daily,
12 multiple times a day, does that person
13 generate a calendar for you for the week?
14 How do you know what's coming up? What
15 is your tickler system?

16 MR. KOZOLCHYK: We have an online
17 database. The calendar is in the
18 database. I have access to the database.

19 MS. HIGGINS: And you have access to
20 the database? And what software program
21 is that, is that like Clio, is that
22 1Drive? What is that?

23 MR. KOZOLCHYK: Sales Force.

24 MS. HIGGINS: Sales Force?

25 MR. KOZOLCHYK: Uh-huh.

1 MS. HIGGINS: Okay. And would you
2 say you're proficient in being able to
3 maneuver that?

4 MR. KOZOLCHYK: Uh-huh.

5 MR. HEARON: Is that a yes?

6 MR. KOZOLCHYK: Yes, I'm sorry, yes.
7 That's a yes.

8 MS. HIGGINS: In the Reddish case,
9 you said you worked a lot on that case,
10 put a lot of energy in that case, leading
11 up to the time when the case was
12 ultimately dismissed. Was that the one
13 that you were talking about in that
14 description that you gave us a little
15 earlier?

16 MR. KOZOLCHYK: Right, so I put
17 blood, sweat and tears in the case.

18 MS. HIGGINS: I thought you had said
19 that, but I was wondering if I was merely
20 remembering lyrics to a song.

21 Okay. You put a lot of blood, sweat
22 and tears into that.

23 And then at some point you pulled
24 the brake on that case and you just,
25 according to the court's order, you just

1 didn't prosecute it anymore. Was that
2 because the defendant had announced that
3 they were going to go bankrupt and there
4 was no point in trying to work that case
5 up if you weren't going to be able to
6 recover anything? Was that the reason?

7 MR. KOZOLCHYK: Both my client and I
8 felt the same way that if they're going
9 to file bankruptcy, I'd rather they do it
10 before we spent the resources of a trial.

11 MS. HIGGINS: I wasn't really sure
12 we had an answer as to why -- and the
13 court didn't, clearly, as Judge Williams
14 indicated that four months went by and
15 you didn't do this and you didn't do
16 that.

17 At some point, I guess it was
18 because you just didn't want to spend
19 your resources. I'm not criticizing
20 that. I'm just asking if that was the
21 reason.

22 MR. KOZOLCHYK: My client and I did
23 not think it made sense if they were
24 going to file for bankruptcy to incur
25 more time and resources, assuming they

1 were going to file for bankruptcy.

2 MS. HIGGINS: All right. And did
3 you have some sort of system in place to
4 check and see if the defendant had
5 actually filed bankruptcy? I mean at
6 some point after a month goes by and they
7 didn't file bankruptcy, didn't something
8 alert you that there was something up?

9 MR. KOZOLCHYK: No. But both my
10 client and I were not pleased with the
11 case and it was a very long fought case.
12 It frankly -- it should have settled a
13 long time ago, but the defendants and
14 their attorney were -- the defendants had
15 three different attorneys. They hired
16 one, not interested in resolution, fired
17 them, hired someone else or withdrew.
18 I'm not making the distinction between
19 firing or withdrawing. But basically
20 they have hired three different attorneys
21 during the course of this litigation just
22 to keep fighting, fighting, fighting,
23 anything other than resolve it, so my
24 client and I were very disillusioned.
25 That's why at the very end they said they

1 were going to file bankruptcy and we
2 didn't believe it made sense to go to
3 trial. And so we were both -- my client
4 was sick of the case and I could
5 certainly share his sentiment.

6 MS. HIGGINS: I want to go back to
7 your office procedures. Sorry, I think
8 you answered this once before in another
9 hearing. Let me know now. How many
10 cases do you carry total on any given
11 time on average?

12 MR. KOZOLCHYK: Can I look it up so
13 I can give you a precise number? It's
14 going to take me -- I could do it in
15 under a minute.

16 MS. HIGGINS: Okay.

17 MR. KOZOLCHYK: Currently I have 44
18 open cases.

19 MS. HIGGINS: That's in federal
20 court or all together? I mean, in
21 federal court or the Southern District of
22 Florida or all together everywhere?

23 MR. KOZOLCHYK: In the Southern
24 District of Florida, which is 99.9
25 percent of my practice, that's not an

1 exact calculation. It will accurately
2 represent what we're talking about here.
3 I pretty much almost practice exclusively
4 in the Southern District of Florida.

5 MS. HIGGINS: I may not have
6 understood correctly. But one of the
7 things that you said, I think, and I
8 wasn't really sure with regard to which
9 case, whether it was Reddish or something
10 else, that you didn't think you needed to
11 report it because the court's language
12 was directed at the plaintiff and not
13 necessarily plaintiff's counsel.

14 MR. KOZOLCHYK: No, no, no. The
15 motion to dismiss -- this was not a court
16 order. The motion to dismiss. If we're
17 talking about the same case, there's a
18 motion to dismiss where the defense
19 attorney said plaintiff is trying to
20 further mislead the court. That's the
21 argument he put in his motion to dismiss.

22 MS. HIGGINS: Once a person is
23 represented by counsel, it's kind of not.
24 Unless it's a specific reference to a
25 comment in a deposition or a specific

1 answer of an interrogatory, and even
2 then, you would agree that once the
3 person is represented by counsel, those
4 comments of plaintiff is doing this,
5 defense is doing that, is really aimed at
6 an attorney, not the actual party of the
7 case, right?

8 MR. KOZOLCHYK: I thought that would
9 be the case and that's why when I cast a
10 broader net, I reported it and I realized
11 that that could be something within the
12 scope and I reported it.

13 I'm not trying to argue with you
14 that I shouldn't have reported it. I
15 didn't report it at the time because I
16 thought that was a meaningful
17 distinction. Upon getting the notice of
18 hearing and thinking, is there anything I
19 missed, I thought, "You know what, that
20 particular case is probably not a
21 meaningful distinction, I should better
22 report it. And I reported it."

23 MS. HIGGINS: I think it might be a
24 distinction without a difference and the
25 committee would probably agree, I don't

1 know.

2 Mr. Kozolchyk, look, I just want to
3 let you know I'm a sole practitioner
4 myself, I imagine that if there's no
5 other attorney in your office and you are
6 the sole practitioner, notwithstanding
7 what your business manager is doing, but
8 I just think that -- so I'm aware of some
9 of the limitations that a sole
10 practitioner can have, but I think at
11 this point there might be some need for
12 maybe some oversight in your office so
13 these things don't go through the cracks.

14 At this point, I have nothing else
15 to say. No further questions.

16 MR. HEARON: Thank you, Celeste.

17 It's actually not a phrase in a
18 song, but the name of a musical group
19 from the '70s, as I recall, Blood, Sweat
20 and Tears.

21 Margot, you're up.

22 MS. MOSS: Good afternoon. My name
23 is Margot Moss.

24 Mr. Kozolchyk, and I apologize if
25 I'm not saying your name correctly, I

1 appreciate that you have said that you
2 did not willfully miss sending orders or
3 accusations to the committee. I am sure
4 you have gotten the sense throughout this
5 hearing that the committee members or
6 some committee members feel differently
7 about that. Have you gotten that sense?

8 MR. KOZOLCHYK: Yeah.

9 MS. MOSS: And we've discussed with
10 you some of the methods that you have in
11 place and systems you have in place at
12 your firm that may not be sufficient
13 completely to catch all these things.

14 My question is. Going forward, if
15 the committee should decide that they
16 need to extend this reporting period to
17 you, what would you do differently going
18 forward, and will you do anything
19 differently in order to catch these
20 things in order to send them to the
21 committee?

22 MR. KOZOLCHYK: I have a request,
23 but it's probably not my place to request
24 anything. I would ask that the order be
25 narrowed a little bit in its scope and --

1 just a little less. I think it's vague,
2 but I hope that doesn't offend the
3 committee to characterize it like that.
4 If there's something more black and white
5 about what precisely triggers it that is
6 not open to interpretation, I would
7 welcome that modification of the order.
8 If that's not available -- what I'm going
9 to be, emerging from this, is that -- I'm
10 going to be extremely, extremely careful
11 and if anything could remotely be
12 characterized within the scope, I'm going
13 to cast the broadest net possible.

14 I hope Mr. Hearon doesn't get tired
15 of receiving emails from me, because even
16 today -- today I got -- today, the
17 defendants in a case filed a response to
18 a statement of claim, where they accused
19 me of not complying with the court's
20 order because the court's order says to
21 provide all documents you have including
22 any time sheets and anything else. I
23 provided what documents we had. It
24 didn't have time sheets because my client
25 doesn't have time sheets, and so she put

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1 in her response that I'm not complying
2 with the court's order. So I will be
3 reporting that to Mr. Hearon, even though
4 under the FLSA it's not the defendant's
5 burden to maintain time records.

6 Plaintiff is not required to maintain
7 time records, the orders to desist,
8 whatever you have such as time records.
9 But now I'm being accused of not
10 complying with the court's order because
11 within what we produced, which is
12 everything we had, there were no time
13 records.

14 So Mr. Hearon -- Mr. Hearon is going
15 to be getting a lot more emails from me
16 because I'm going to be very, very broad
17 that there can't possibly be a
18 misunderstanding or that somehow I did
19 not report something that was within the
20 scope.

21 MS. MOSS: What I'm hearing is that
22 these things that have been missed, is
23 that because there was a misunderstanding
24 or because you just missed them?

25 MR. KOZOLCHYK: Two of the things

1 were -- I'm aware of four examples.
2 There's the Reddish case, the Martinez
3 case, the Santiago case and that other
4 case where the guy filed a motion to
5 dismiss.

6 In the Reddish case, I completely
7 missed it. Not even on my radar. Didn't
8 even think about it until I got the email
9 from Mr. Hearon.

10 The Martinez case, it was a rule of
11 motion for sanctions. At the time it did
12 not even register and I can explain again
13 if the committee would like to know why,
14 but when I got the notice of hearing I
15 thought long and hard if anything else
16 could be within that scope and it
17 occurred to me, "Oh, let me make sure I
18 include that," so it didn't register at
19 the time. So those are the two that,
20 yes, I missed. But then I reported the
21 second one.

22 The other two, I thought they were
23 not within the scope for various reasons.
24 Again, when I got the notice of hearing,
25 I'm like, let me cast as broad a net as

1 possible and make sure I include those.

2 MS. MOSS: So what I'm hearing again
3 is it's kind of a mixture of just missing
4 it and maybe not understanding the scope.

5 Again, going forward, it seems to me
6 that your answers are that you're going
7 to be much broader in how you interpret
8 the language of the order; is that right?

9 MR. KOZOLCHYK: Broad and be more
10 careful. I am going to do everything I
11 can to make sure they are never missed
12 again.

13 MS. MOSS: And the committee can
14 discuss the language of the order if that
15 seems to be the issue, but will you reach
16 out, at least to Mr. Hearon and to the
17 committee if there's a question in your
18 mind about whether this should be
19 reported or not reported?

20 MR. KOZOLCHYK: 100 percent. If I
21 have a question to any uncertainty, Mr.
22 Hearon will be hearing about it.

23 MS. MOSS: I have nothing further.

24 MR. HEARON: Thank you, Margot.

25 Tiffani?

1 MS. LEE: Thanks, Bill.

2 I have two questions, Mr. Kozolchyk.
3 When Ms. Moss asked you what you would
4 like to see different, you first said you
5 would like the order language to be more
6 precise. What more precise language
7 would help you not miss these reporting
8 obligations?

9 MR. KOZOLCHYK: The word -- the word
10 "problematic" is very broad. Look, this
11 is what I would like. If the committee
12 doesn't agree with it, I respect the
13 committee's decision. I'm not trying to
14 sound like I'm complaining or criticizing
15 anything.

16 What would I change from it? You
17 know, if it says "sanctions," that's
18 pretty unambiguous. If it says -- I'm
19 brainstorming here in real time. I'm
20 just saying the term "sanctions" is black
21 and white. "Problematic" is vague and
22 open to interpretation to some extent.
23 To some extent it's not. That's just an
24 example.

25 So if it were up to me, which it is

1 absolutely not, I would make the scope
2 items that are black and white and
3 unambiguous and cannot be misinterpreted.

4 MS. LEE: Thank you.

5 In terms of things that you missed,
6 you talked about the August 30th email
7 that you sent to Mr. Hearon reporting on
8 the order and motion for sanctions in the
9 Keefe case. Do you remember that?

10 MR. KOZOLCHYK: Yeah.

11 MS. LEE: And then he responded to
12 you and asked you to confirm that you did
13 not forward and attach a discovery
14 memorandum in which sanctions were sought
15 against you. Do you recall that?

16 MR. KOZOLCHYK: Yeah, that was an
17 oversight.

18 MS. LEE: So was that one that you
19 just completely missed, like the Reddish
20 case, or is that one that you determined
21 was outside the scope?

22 MR. KOZOLCHYK: Absolutely missed.

23 MS. LEE: I don't have any further
24 questions.

25 MR. HEARON: Thank you.

1 Devang?

2 MR. DESAI: Thanks, Bill. I don't
3 have any questions.

4 MR. HEARON: Valencia?

5 MS. GALLON-STUBBS: Thank you. Mr.
6 Kozolchyk, I want to say your name
7 correctly. Can you say your name for me?

8 MR. KOZOLCHYK: Kozolchyk, but I'm
9 very happy to go by Elliot.

10 MS. GALLON-STUBBS: Kozolchyk, I
11 will try it that way.

12 I have a question for you. In
13 listening to you, what recommendations,
14 if you were the committee -- I mean, we
15 have gone through this at the first time,
16 but now we are at the second time around.
17 I'm asking your input of type of
18 recommendations in ensuring that you
19 comply with the court's order going
20 forward.

21 MR. KOZOLCHYK: Extend the
22 probation. I mean, this is my -- again,
23 this is my -- my opinions are irrelevant.
24 So I don't want it to be seemed to be
25 taken the wrong way by the committee.

1 But I would think extend the
2 probation and narrow the language and
3 make the language more unambiguous.

4 MS. GALLON-STUBBS: What about any
5 thoughts as far as a mentor? What are
6 your thoughts on that?

7 MR. KOZOLCHYK: If I can sincerely
8 ask you, what would the purpose of the
9 mentor be? If I can just have a couple
10 of minutes on that.

11 When the committee first saw me,
12 there were cases complained about where I
13 had very aggressively engaged in -- I
14 reciprocated what was done to me. There
15 were tremendous attacks on me and I
16 reciprocated.

17 As I sit here before you today, I
18 have not engaged in any of that conduct.
19 So when defendants attack me personally,
20 I am not reciprocating. I'm sticking to
21 the issues and staying professional in my
22 writing.

23 And so, if I lack the capability of
24 doing that, I guess a mentor might guide
25 me on that, but it seems here it's more a

1 function of is there some system you
2 desire me to employ that I'm not aware
3 of? This is a subjective analysis of
4 every review, of every filing in the case
5 that my firm manager and I are
6 performing, there's not a mentor that is
7 going to want to look at all my filings.
8 And I'm making it very clear, if I have
9 any questions or uncertainty about
10 whether something should or should not be
11 included, it's going right to Mr. Hearon
12 moving forward.

13 MS. GALLON-STUBBS: But a mentor,
14 someone that you can go to, right, when
15 you have these questions. When you have
16 these contentious cases that come up,
17 almost an outlet, but an outlet in a
18 professional way, to kind of help guide
19 you along. So that's my thoughts. I'm
20 not speaking on behalf of the entire
21 committee, but from my standpoint, where
22 I'm coming from.

23 MR. KOZOLCHYK: I have a couple of
24 people who I can call and ask questions
25 on how to proceed if I have questions on

1 something.

2 MS. GALLON-STUBBS: That have the
3 same type of cases and background in
4 which you practice.

5 MR. KOZOLCHYK: Yes.

6 MS. GALLON-STUBBS: As far as you've
7 already shared with us on several
8 occasions that there are two -- office of
9 two, outside are remote workers. How are
10 you able to ensure that -- you know, you
11 referenced candidly that there are some
12 oversights, right, in reporting them to
13 the committee, so how are you going to
14 move forward and ensure that there is no
15 additional oversight and that we're not
16 right back at this juncture again?

17 MR. KOZOLCHYK: There's two parts to
18 this. There's whether something doesn't
19 register mentally when I'm reading
20 something. The other thing is whether it
21 does register and I decide that might not
22 be within the scope.

23 Let me address the second one first.
24 To the extent anything can potentially be
25 interpreted as within the scope, I am not

1 going to split hairs. If it could be
2 interpreted, it's going to Mr. Hearon for
3 reporting.

4 Regarding the first one, whether
5 something registers or not, I am going to
6 look at stuff as carefully as I can, and
7 I'm going to do the absolute best I can
8 to make sure nothing falls through the
9 cracks and what should be reported to
10 this committee, and I am optimistic that
11 that will not be an issue moving forward.

12 MS. GALLON-STUBBS: I'm trying to
13 share with you -- and these are just my
14 thoughts. You said about over 99 percent
15 of your practice is in federal court in
16 the Southern District and an office of
17 two, you being the sole lawyer, so you
18 have these active cases that are going
19 on. It's quite a movement going in so to
20 ensure that nothing slips through the
21 cracks. That's why I'm asking, you know,
22 other ways to help you, not to put
23 additional stress on you, "Oh, I got
24 this, I missed this one and I caught this
25 one." Again, those are just my thoughts

1 of something additional and different,
2 additional person, and I know we're
3 talking about the mentor, but someone
4 that can help ensure that nothing falls
5 through the cracks.

6 MR. KOZOLCHYK: It's not for me to
7 ask questions but if this committee has
8 this for other attorneys, what do the
9 other attorneys do that the committee
10 approves of?

11 MR. HEARON: You are right, that's
12 not a question that we're going to answer
13 for you.

14 Valencia?

15 MS. GALLON-STUBBS: With that being
16 said, I don't have any further questions.

17 MR. HEARON: Thank you.

18 Bernardo?

19 MR. LOPEZ: Mr. Kozolchyk, I know
20 we've been going for a while, so let me
21 see if I can be quick and direct. Let me
22 understand your practice again just to
23 make sure to kind of fine tune some of
24 the answers you've given.

25 In the cases you have in the federal

1 court, filing comes in, there's an order
2 or a filing from another party. Do you
3 individually, do you yourself review each
4 and every filing as it comes in or does
5 your assistant review them and then hand
6 you the ones that she thinks are
7 important, or you get a stack of them and
8 then review them later on? How does that
9 work?

10 MR. KOZOLCHYK: We both review them
11 as they come in and she will bring to my
12 attention things that are important that
13 should be taken further action on as
14 well.

15 MR. LOPEZ: Do you personally
16 review every filing and order that comes
17 in?

18 MR. KOZOLCHYK: Yes.

19 MR. LOPEZ: I think in your answer a
20 couple of things have come out, but I
21 want to make sure we clarify them and get
22 them on the record.

23 You thought that the language in the
24 order from the committee was vague and
25 ambiguous, right? I'm not going to take

1 that personally. It seems very clear
2 from your answer that you thought that;
3 is that correct?

4 MR. KOZOLCHYK: I thought it was
5 vague but I'm not complaining and --

6 MR. LOPEZ: No, no, but you thought
7 the language was vague and ambiguous?

8 MR. KOZOLCHYK: Particularly the
9 word "problematic." I thought a lot of
10 things can fall under that without a
11 clear definition of it.

12 MR. LOPEZ: Did you ever seek any
13 clarification from the committee or from
14 the court?

15 MR. KOZOLCHYK: I don't recall. I
16 don't know. I don't think so. I don't
17 know if when the order was first being
18 drafted I might have raised a concern
19 with Mr. Hearon. I know I raised -- I
20 don't recall what concerns I might have
21 raised with Mr. Hearon. I don't know if
22 that was one of them, so I can't say for
23 sure if that was one of them or not.

24 MR. LOPEZ: As these filings were
25 coming in and you were having trouble

1 figuring out whether they are fitting
2 into the order or not, did you at that
3 time seek any clarification from the
4 committee?

5 MR. KOZOLCHYK: No, I didn't think I
6 needed to, but it's very clear now that
7 if there's anything that could possibly
8 be interpreted within the scope that I
9 should absolutely report it.

10 MR. LOPEZ: Thank you. I think
11 you've said that a couple of times. From
12 now on to the extent that there's any
13 kind of question as to whether it falls
14 within the scope or not, you will assume
15 it does and you will report it.

16 I think something else that comes
17 clear from your testimony today that that
18 didn't happen before. If there was an
19 order or a filing that came in and it was
20 maybe close, but you weren't sure because
21 of the ambiguity of the language, that
22 your default was to not report it and
23 that happened at least four times; am I
24 correct?

25 MR. KOZOLCHYK: No, I wouldn't frame

1 it like that. It's not that my default
2 was not reporting. We made a judgment
3 call. When I say I make a judgment call
4 in every filing, I mean, every filing, a
5 notice of compliance, any filing in every
6 single case, we make a judgment call.
7 And we thought that -- at the time we
8 thought, again, I said two of them didn't
9 even register. So it was not even on our
10 radar. The two that did we thought at
11 the time one was sufficiently abstract is
12 the word, sufficiently abstract, and its
13 insinuation that it put me outside the
14 scope of reporting it, and the other one
15 referred to the plaintiff and not me.
16 But I'm not defending the decisions I
17 made not to report those at the time I
18 made those decisions. Ultimately I did
19 report them when I casted a broader net
20 and that is what I'm operating under now.
21 If there's any question, report it.

22 MR. LOPEZ: And you cast that
23 broader net after you got the notice from
24 the committee; is that correct?

25 MR. KOZOLCHYK: When I caught wind

1 that there was a problem.

2 MR. LOPEZ: The notice of the
3 hearing and all of a sudden you went back
4 and cast a broader net; is that correct?

5 MR. KOZOLCHYK: Yeah.

6 MR. LOPEZ: On the Reddish issue, I
7 had a question, too. Ms. Higgins asked
8 you questions about the procedure you go
9 through for docketing deadlines and
10 everything like that. I think you said
11 in the Reddish case when it got
12 transferred to Judge Williams, you
13 thought all the prior deadlines were
14 clear. In other words, everything was
15 cleared and now you were waiting for new
16 deadlines from the judge, right, so
17 nothing happened in that case for years.
18 So what part of your system would catch
19 something like where in your view at
20 least there are no deadlines, but nothing
21 is happening in the case and nothing has
22 happened in the case for like a year, how
23 do you catch that with your system?

24 MR. KOZOLCHYK: Well, we can see
25 whether there's been activity on the

1 docket in an open case or something like
2 that. The case was on my mind. And at
3 some point we were going to file
4 something if the judge didn't do --
5 there's an ECF filing that said that the
6 deadlines were terminated. That's why we
7 thought we weren't liable for any
8 deadlines after the transfer.

9 And we had looked and seen that the
10 judge -- several cases were transferred
11 around the same time to the judge and we
12 saw that she set a hearing in the other
13 cases for a status conference.

14 It's not like this was going to go
15 indefinitely. As far as the system, I
16 don't have an exact system for that but
17 it was on my mind and I had planned at
18 some point, if the judge was not going to
19 set a status conference, to file a motion
20 for a status conference.

21 MR. LOPEZ: But nothing happened
22 within a year. So is there anything that
23 you think you might be able to implement
24 so that you can catch those kind of
25 things? Because in this case, it went to

1 the detriment of your client. The case
2 was dismissed, dismissed with prejudice,
3 and now your client has no case.

4 Is there anything going forward that
5 you can implement so that you can catch
6 something like that?

7 MR. KOZOLCHYK: Yes. If there
8 hasn't been activity in a certain amount
9 of time, to review the file again and
10 create activity.

11 MR. LOPEZ: Just one last thing for
12 the record to make sure everything is
13 clear.

14 You are aware that Mr. Eric
15 Gabrielle was not part of the committee
16 when your case was brought to the
17 committee's attention, and that he in
18 fact had no part at all in any decision
19 regarding your case? Are you aware of
20 that?

21 MR. KOZOLCHYK: I'm not suggesting
22 otherwise.

23 MR. LOPEZ: No, no, but are you
24 aware that he had no connection with your
25 case?

1 MR. KOZOLCHYK: Right, I'm not
2 suggesting otherwise.

3 MR. LOPEZ: No further questions,
4 Bill.

5 MR. HEARON: Allison? Allison?

6 MS. KAHN: Hi, Mr. Kozolchyk. I'm
7 Allison Kahn. I feel like everyone has
8 kind of touched on it, but I want to know
9 the exact number of staff that you have
10 in your office. You have your office
11 manager, correct, and you employee two
12 receptionists, correct?

13 MR. KOZOLCHYK: I have three
14 part-time contractors.

15 MS. KAHN: Do they work remote?

16 MR. KOZOLCHYK: Yes.

17 MS. KAHN: You have three part-time
18 contractors and your office manager and
19 that is it, correct?

20 MR. KOZOLCHYK: Yes, currently.

21 MS. KAHN: What do you mean by
22 currently?

23 MR. KOZOLCHYK: Maybe like a year or
24 two ago, I had another remote worker, but
25 it was not recent.

1 MS. KAHN: Do the remote workers
2 work for anyone else or just you?

3 MR. KOZOLCHYK: They work for others
4 as well.

5 MS. KAHN: Do you handle mostly FLSA
6 cases?

7 MR. KOZOLCHYK: Yes.

8 MS. KAHN: Do you also have pending
9 EEOC and FCHR matters?

10 MR. KOZOLCHYK: I don't even know
11 what an FCHR matter is, but no EEOC.

12 MS. KAHN: It's the state
13 counterpart for EEOC.

14 MR. KOZOLCHYK: No.

15 MS. KAHN: Have you ever been
16 investigated by the bar? I know it's a
17 little bit off topic, but I'm just
18 curious.

19 MR. KOZOLCHYK: Are you asking
20 whether I had a Florida Bar complaint
21 against me?

22 MS. KAHN: Have they ever opened an
23 investigation?

24 MR. KOZOLCHYK: Yes.

25 MS. KAHN: How many?

1 MR. KOZOLCHYK: You're talking about
2 like bar complaints, right?

3 MS. KAHN: I'm talking about bar
4 complaints. You seem to want to, you
5 know, parse out words during everyone's
6 questions.

7 I want to know how many times, not
8 just a bar complaint, but where a bar
9 opened a file and investigated you?

10 MR. KOZOLCHYK: Off the top of my
11 head in the 13 years that I have been
12 practicing, maybe ten times, but that's a
13 very rough approximation. And my sole
14 purpose in parsing, as you put it, is I
15 want to make sure that the answers I give
16 you are completely truthful and accurate.

17 MS. KAHN: I think it's to qualify.
18 I find what you say very hard to swallow.
19 I don't think you take any personal
20 responsibility. And, you know, I'm board
21 certified in labor and employment law.
22 These are not contentious cases. FLSA
23 cases are easy, how many hours did they
24 work, how much were they paid. You're
25 blaming everyone for picking on you,

1 personal attacks against you. But do you
2 not understand that that's because you're
3 not filing -- you're not serving initial
4 disclosures, you're not serving verified
5 interrogatories, you're making incorrect
6 representations? That was a question.

7 MR. KOZOLCHYK: I mean, I
8 respectfully don't know how you can say
9 these are not contentious cases. I have
10 a guy threatening to disbar me saying
11 that he's going to make it his mission to
12 disbar me and references this order --

13 MS. KAHN: I'm going to stop you
14 there. I'm sorry, I can't. Because
15 you're just doing what I just told you.
16 You're making excuses. I'm sorry. I've
17 been doing this for 20 years and it
18 doesn't mean you don't ever have
19 contentious cases, but my point is, have
20 you considered that maybe you're the
21 difficult one because you're not doing
22 your work, and that's frustrating the
23 other side? Have you considered that?

24 MR. KOZOLCHYK: Yes, I have
25 considered that.

1 MS. KAHN: My personal view is --
2 this is not personal overall, what we've
3 seen, not a personal attack, but you are
4 not doing your work and they are calling
5 you out on it.

6 What do you do for continuing to
7 ensure that, you know, you know the
8 substantive law in terms of following
9 case updates and how do you keep track of
10 the changes in the law?

11 MR. KOZOLCHYK: I research the
12 issues on a regular basis as they arise
13 and I read the Law 360 newsletter and I
14 read the 11th Circuit Court of Appeals
15 opinions.

16 MS. KAHN: Every week?

17 MR. KOZOLCHYK: Yeah, yes.

18 Am I being accused of making bad
19 arguments about the law?

20 MS. KAHN: This is not your
21 opportunity to ask me questions.

22 I have nothing further.

23 MR. HEARON: Thank you.

24 Richard?

25 MR. BARON: Thank you, Bill.

1 Mr. Kozolchyk, my name is Richard
2 Baron, and while in the past I have
3 defended a number of Fair Labor Standard
4 Act cases, have you and I ever had a
5 case? I don't believe we have.

6 MR. KOZOLCHYK: I don't believe so.
7 Not that I can recall.

8 MR. BARON: When you first appeared
9 before this committee and the committee
10 entered an order to monitor you and have
11 you review your pleadings and anything
12 that you felt where anyone else might
13 have felt you were problematic, you were
14 supposed to report it, right?

15 MR. KOZOLCHYK: Yes.

16 MR. BARON: In reviewing that order,
17 did it ever cross your mind that if you
18 violated that order there might be very
19 serious repercussions?

20 MR. KOZOLCHYK: Yes.

21 MR. BARON: And you had stated that
22 99 percent of your cases are in the
23 federal -- Southern Federal District
24 Court.

25 MR. KOZOLCHYK: Yes. I would say a

1 hundred percent.

2 MR. BARON: Here's my point.
3 There's a disconnect for me. A hundred
4 percent of your practice is in federal
5 court. You are under an order that
6 requires you to monitor pleadings, that
7 requires you to filter pleadings that are
8 problematic, however, you may define it.
9 How is it that you weren't overly
10 reflective of that order and didn't just
11 report anything that could have been
12 interpreted, without you having to bounce
13 on the head of a pin to determine what we
14 want to see and what we don't want to
15 see? Why didn't it just occur to you --
16 because it would have occurred to me --
17 that if I'm under the scrutiny of the
18 grievance committee that dictates whether
19 or not I will continue to practice in the
20 federal district court where all my
21 business is, I better be damn careful.
22 And that's the disconnect that I have
23 that that didn't connect with you.

24 And I want you to try to explain to
25 me, other than with BS, why that didn't

1 connect to you, why didn't you look at
2 every single piece of paper that came in
3 and your immediate thought was, "Does
4 this have to be reported," rather than
5 the other way around, which is what I'm
6 suspecting you did. You read a pleading
7 -- and I'm not even sure I agree with
8 Allison -- that you reviewed the
9 pleading, I'm not a hundred percent sure
10 that a lack of a pleading on a motion to
11 dismiss, that's something that should
12 have been reported, you would have picked
13 it up, because I get the same sense
14 Allison gets, you have 44 cases, you're
15 overburdened, you're a sole practitioner
16 and you're waiting for the last minute
17 seeking extensions and deadlines and your
18 practice is really, sounds to me like
19 it's a disaster. Am I wrong? I mean, I
20 know FLSA work can be very rewarding
21 financially. You get one or two big
22 cases a year and you get a big hit -- you
23 work on a contingency, right?

24 MR. KOZOLCHYK: Yes.

25 MR. BARON: Every case is a

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1 contingency, right?

2 MR. KOZOLCHYK: Yes.

3 MR. BARON: Without going into your
4 personal income, would you say that this
5 has been a good practice for you
6 financially?

7 MR. KOZOLCHYK: I think it's an okay
8 practice.

9 MR. BARON: So is this something
10 that you're willing to jeopardize, this
11 "okay practice," by not being a hundred
12 percent diligent in reviewing every
13 document and when there's a benefit of a
14 doubt turning it over to Mr. Hearon?

15 MR. KOZOLCHYK: No.

16 MR. BARON: What do we do with a guy
17 like you? You say "extend my probation,"
18 I don't know if that's going to solve the
19 problem. I see the problem is you're
20 overworked, understaffed and
21 overburdened. And to me, that's a real
22 problem for the privilege of practicing
23 in federal court. This is not all right.

24 MR. KOZOLCHYK: I'm really sorry.

25 MR. BARON: Let me follow up on

1 something else that Allison said. You
2 think you've had ten open bar complaints
3 in the last 13 years?

4 MR. KOZOLCHKY: That is a rough
5 estimate.

6 MR. BARON: Could there have been
7 more?

8 MR. KOZOLCHYK: Possibly, but there
9 could have been less as well.

10 MR. BARON: Have you ever been
11 disciplined by the Florida Bar?

12 MR. KOZOLCHYK: Yes.

13 MR. BARON: What was that
14 discipline?

15 MR. KOZOLCHYK: In the Dahdouh case,
16 which I think the committee was aware of,
17 I had to attend a class.

18 MR. BARON: There was a diversion?
19 In that little -- that little green spot
20 in the Florida Bar website that says
21 "discipline in the last ten years," is
22 yours green or red?

23 MR. KOZOLCHYK: Mine is green.

24 MR. BARON: So you haven't been
25 disciplined in the last ten years?

1 MR. KOZOLCHYK: Oh, no. But the
2 letter that triggers this committee's
3 oversight was also forwarded to the
4 Florida Bar and they are dealing with
5 that as well.

6 MR. BARON: That's pending?

7 MR. KOZOLCHYK: Yes.

8 MR. BARON: Do you have counsel for
9 that?

10 MR. KOZOLCHYK: No.

11 MR. BARON: It might be a good idea
12 after today to have somebody assist you
13 through these times. I mean, that's the
14 kind of judgment you're exhibiting to
15 this committee. You don't have counsel
16 here, you just told us you don't have bar
17 counsel and there's a pending matter
18 before the Florida Bar. Don't you think
19 it shows this committee a lack of
20 judgment, Abe Lincoln's old saying,
21 "Anyone who represents himself has a fool
22 for a client"?

23 MR. KOZOLCHYK: I had an attorney at
24 the beginning of this. It became
25 extremely, extremely expensive. It's not

1 a function of me not taking this
2 seriously. I take this extremely
3 seriously.

4 MR. BARON: I don't buy that. I
5 think if you took it extremely seriously,
6 you wouldn't be back here today. That's
7 really what I think. And I'm a pussycat.
8 I am not one of the hard noses on this
9 committee, but I've been listening to you
10 for two hours now and I don't believe
11 hardly a word you're saying. When you
12 say you do the very best you can, the
13 very best you can stinks. The very best
14 you can got you in front of us again.

15 You had to be reminded by this board
16 to double check to make sure that you
17 reported everything and you're taking
18 credit for having reported, screw the
19 items, in retrospect and second thought,
20 maybe they should have been reported, so
21 I reported them.

22 The truth is you never would have
23 looked and never reported it if you never
24 would have gotten the email from Mr.
25 Hearon, correct?

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1 MR. KOZOLCHYK: I was not aware of
2 an issue until -- I was not thinking "I'm
3 going to hide something" and then not
4 report it.

5 MR. BARON: I believe that. That's
6 one of the few things that I do believe.
7 I do believe that.

8 But what I can't believe is that you
9 didn't look at everything so carefully
10 that even the slightest of things, you
11 would have sent it to Mr. Hearon, because
12 you know that your livelihood may very
13 well depend on what this committee does.
14 How would you like a 60 day suspension,
15 for example, what would that do to your
16 career?

17 MR. KOZOLCHYK: It would destroy my
18 practice.

19 MR. BARON: You knew that, or should
20 have known going in that you needed to be
21 a hundred percent diligent and fully
22 compliant and you weren't. And I can't
23 understand for the life of me why and
24 there's no excuse. I don't think you can
25 tell us why, other than you're

1 overworked, overburdened, understaffed.
2 Other than that, I can't think of any
3 reason why you wouldn't have made sure
4 that you wouldn't be sitting here again.

5 I have nothing further.

6 MR. KOZOLCHYK: May I speak, please?

7 MR. HEARON: Go ahead, Elliot.

8 MR. KOZOLCHYK: I take
9 responsibility for not reporting the
10 things that I did not report. I am sorry
11 and if I am permitted to practice and if
12 I'm on probation again for another year,
13 you can know that it will not happen
14 again. It absolutely will not happen
15 again. And I'm sorry and I take
16 responsibility. And please give me the
17 opportunity and there won't be anything
18 even close of a failure to report. I'm
19 really sorry for the ones that I missed.
20 It will not happen again.

21 MR. HEARON: Are you done, Richard?

22 MR. BARON: Not quite.

23 It isn't your failure to take
24 responsibility. It's your failure to not
25 have done it in the first place.

1 Let me say one last thing to you.
2 I've had a number of Fair Labor Standard
3 Act cases in my life and I've had them
4 with some guys that are well known to be
5 difficult lawyers, and none of them were
6 contentious. And in the period of one
7 year, you reported ten to 14 complaints
8 or statements that you had made that
9 attacked you or your client based upon
10 your pleadings or your work, ten to 14 in
11 one year. I've been practicing 53 years
12 and I don't think I've had two.

13 How do you explain ten since January
14 or since October of last year? What is
15 going on that people are writing these
16 things about you that need -- that
17 require you to bring it to our attention?
18 I would have hoped last year that you
19 never would have had to send anything to
20 Bill. That was my hope.

21 MR. KOZOLCHYK: If I may, please.
22 I'm not trying to not take
23 responsibility, but if we can go through
24 a couple of the examples. There was the
25 one that they filed a Rule 11 motion for

1 sanctions because the defense attorney on
2 the other side believed the case was
3 frivolous because an exemption had
4 applied. The exemption did not apply.

5 MR. BARON: I'll give you the
6 benefit of the doubt on that one. That's
7 one that you didn't send to the
8 committee. A Rule 11, a request for Rule
9 11 for you filing an inappropriate
10 filing. You didn't think it needed to go
11 to Bill? I mean, that just doesn't
12 connect to me. That wasn't on your
13 radar? That doesn't connect with me.

14 MR. KOZOLCHYK: I agree with you.
15 And I agree with you that it should have
16 been on my radar.

17 MR. BARON: What I'm saying to you
18 is that from the get-go, you never really
19 took this seriously.

20 MR. KOZOLCHYK: No, that's not true
21 at all.

22 MR. BARON: Your actions prove that.
23 Listen, you could have gotten 50 letters
24 and sent all 50 to this committee and
25 this committee may have scratched their

1 heads and said, "I wonder what the hell
2 is going on with Mr. Kozolchyk, but he's
3 been diligent in doing what he was told
4 to do."

5 I'm at a loss. I really am. And
6 I've been doing this a long time. I've
7 sat on bar grievance committees. I do a
8 lot of bar work representing people
9 before the bar. I know about making
10 mistakes and I also know about second
11 chances, and you were given one. You
12 were given one when you were put on
13 probation and asked to report any
14 negative comments or pleadings or other
15 filings and you failed, and I don't know
16 what we should do. Because like I said
17 I'm a pussycat. I don't want to destroy
18 your livelihood. But I don't know what's
19 going to sink through that head of yours.
20 This is serious stuff. You're
21 representing people's interests. They
22 put their faith in you not to get their
23 cases dismissed with prejudice. You let
24 it slip through the cracks. That's
25 negligence. We're not here debating your

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1 competency as an attorney or whether you
2 are negligent. That is a clear example
3 on relying on nothing happening for
4 almost a year as everything is cool.
5 That's negligence and that gives me pause
6 about your ability to practice, as I'm
7 sure it does everyone in this room. And
8 it starts with you not taking that order
9 seriously enough.

10 I'm done.

11 MR. HEARON: Thank you, Richard.

12 Mr. Kozolchyk, this committee has a
13 number of things that it looks at.
14 Obviously, we're concerned about the
15 professionalisms of the lawyers in the
16 Southern District and that extends to
17 making sure that the lawyers are not
18 doing something that impairs their
19 clients' rights, so I think you're
20 getting a little bit of a flavor of that
21 in some of the questions.

22 Let me start off by noting you filed
23 a response to our proposed report and
24 recommendation on August 16th of 2022, at
25 which time you raised two issues with our

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1 proposal in paragraph two. The first was
2 that you wanted us to delete four court
3 filings by opposing counsel in part as I
4 recall because you felt these cases are
5 contentious and you didn't want to open
6 yourself up to having to report every
7 time one of your opposing counsels
8 complained about your behavior. The
9 committee rejected that and then the
10 court adopted the order that we proposed
11 that included that language.

12 The only other objection you had in
13 your response to our proposed report and
14 recommendation had nothing to do with the
15 phrase "problematic" or "unprofessional
16 conduct." Apparently back in August of
17 '22, you didn't have a problem with that
18 language. But you had a problem with our
19 reporting time because we had originally
20 put in our proposal 42 business hours and
21 you wanted 72, to afford you more time,
22 and we agreed to that and we put in 72
23 hours.

24 I think you're starting to hear or
25 you've heard that the committee asked

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1 questions about whether or not the way
2 your office is organized that you are
3 able to fulfill your requirements under
4 this order or able to do it, or if
5 there's an extended period of time that
6 the committee recommends to the court,
7 whether you can do it then.

8 Let me ask you about your cases.
9 You say you have 44 cases now. What do
10 you think the maximum number of cases you
11 can handle is?

12 Since you're pausing, I have to
13 assume that you probably have never
14 considered that question.

15 MR. KOZOLCHYK: I don't have a clear
16 answer to that.

17 MR. HEARON: You're handling 44
18 cases now. In the last year, what was
19 the maximum number of cases you handled?

20 MR. KOZOLCHYK: At any given time, I
21 really don't run the numbers on that. I
22 don't have an answer to that, because I
23 don't run the numbers on how many open
24 cases. I haven't checked how many open
25 cases I have had -- I mean, as far as

1 like the total number for some time, I
2 don't do a count on that on a regular
3 basis. I think it's probably been around
4 this number.

5 MR. HEARON: If you think of an
6 answer to my question as I'm continuing
7 to ask you, you can tell me, but I want
8 to ask some other questions.

9 Your office manager, is that Phoebe?

10 MR. KOZOLCHYK: Yes.

11 MR. HEARON: And if I recall
12 correctly Phoebe had some relationship to
13 you, she is the daughter of your former
14 fiancée? Do I have that correct?

15 MR. KOZOLCHYK: Yes.

16 MR. HEARON: And when you're in
17 trial, as you were recently in your
18 communications with me, in the Bow Wow
19 case, who is reading the filings that are
20 coming in in order to comply with this
21 order within 72 hours?

22 MR. KOZOLCHYK: There's the person
23 who does the calendaring. There's me and
24 there's Phoebe.

25 MR. HEARON: And if I brought the

1 person -- give me a name of the person
2 who does the calendaring?

3 MR. KOZOLCHYK: Matthew Binder.

4 MR. HEARON: Where is Matthew Binder
5 located?

6 MR. KOZOLCHYK: Michigan.

7 MR. HEARON: If I ask Matthew Binder
8 if part of his job requirements was to
9 read every filing and to see if there's a
10 claim about your professionalism, would
11 he agree that that was part of his job
12 description?

13 MR. KOZOLCHYK: Yes, his focus is
14 more on exactly deadlines, but that would
15 be part of it as well. It's not his
16 primary focus. His primary focus is
17 deadlines.

18 MR. HEARON: Well, it's either his
19 focus or it isn't, whether it's primary,
20 secondary, third on his list, fourth on
21 his list. He either has responsibility
22 for doing that and to report to you or
23 not.

24 Maybe I should ask it this way. If
25 I asked you to send me any emails that he

1 sent you in the last year where he
2 identified and reported to you that this
3 was a filing or an order that he thought
4 needed to be reported, would I have any
5 of those e-mails? Would you have any of
6 those emails?

7 MR. KOZOLCHYK: No, there wouldn't
8 be any.

9 MR. HEARON: Can we agree for the
10 purposes of my questioning of whether you
11 think he is doing that or not, he
12 probably is not?

13 MR. KOZOLCHYK: He has brought
14 things to my attention before. He does
15 primarily calendar. He has said, "Hey,
16 by the way, make sure, consider this,
17 this was put in this order, this was put
18 in that order." That's why I'm coming up
19 with that. It's not a formal response.
20 If you want a black and white answer,
21 that is not unambiguously within the
22 scope of his responsibility. He has from
23 time to time brought certain things to my
24 attention outside of calendaring that was
25 in an order or some filing to bring it to

1 my attention. That's kind of where I'm
2 going with this. It's not formal of the
3 specific point of reporting requirement.

4 MR. HEARON: It may be that in
5 reviewing an order he brought something
6 to your attention but nothing having to
7 do with the order that we're dealing with
8 here.

9 MR. KOZOLCHYK: Correct.

10 MR. HEARON: And you wouldn't be
11 able to give me an email that you have
12 with him where you tell him that this is
13 part of his responsibility, would you?

14 MR. KOZOLCHYK: Right. And if you
15 want, for purposes of this hearing, I
16 will concede that it's not part of his
17 responsibility. It's not that formal.
18 It's more casual. His formal
19 responsibility is deadlines.

20 MR. HEARON: Tell me now with regard
21 to Phoebe -- her last name is -- how do
22 you pronounce it? Dauz?

23 MR. KOZOLCHYK: Yeah, Dauz.

24 MR. HEARON: D-a-u-z for the court
25 reporter.

1 Every day she reviews all the
2 filings?

3 MR. KOZOLCHYK: Almost every day,
4 yeah.

5 MR. HEARON: Every two days, does
6 she review the filings?

7 MR. KOZOLCHYK: It's usually every
8 day.

9 MR. HEARON: When you were in trial,
10 did she have the sole responsibility to
11 make sure that you were in compliance
12 with this order?

13 MR. KOZOLCHYK: She was in trial
14 with me and we both reviewed filings as
15 well when they came in.

16 MR. HEARON: Is there any email or
17 employment agreement that details that
18 this is one of her responsibilities?

19 MR. KOZOLCHYK: No.

20 MR. HEARON: When she would report
21 these to you, would she do it by way of
22 an email and send you a copy of the
23 filing and say, "I think this is
24 something that you need to report to the
25 committee"?

1 MR. KOZOLCHYK: No, I don't think
2 there's going to be something like that.

3 MR. HEARON: And in the flurry of
4 the ones that I have received in the last
5 two weeks, were those identified by you
6 or by her?

7 MR. KOZOLCHYK: By me.

8 MR. HEARON: All the filings that
9 you do in the Southern District, are they
10 all drafted by you or do others draft
11 them?

12 MR. KOZOLCHYK: I draft them.

13 MR. HEARON: Is that true of 100
14 percent of your filings in the last 12
15 months?

16 MR. KOZOLCHYK: Yeah.

17 MR. HEARON: In how many of the
18 orders that were entered, did your
19 clients suffer direct damages, either by
20 way of monetary sanctions or the
21 dismissal of their case in the last 12
22 months?

23 MR. KOZOLCHYK: Please repeat that
24 question one more time, please?

25 MR. HEARON: In the last 12 months,

1 how many of your clients have suffered
2 monetary sanctions by the court or had
3 their claims dismissed in part or totally
4 because of something that you did in the
5 case?

6 MR. KOZOLCHYK: In Reddish and
7 Keefe, we were joined in the sanctions
8 because the interrogatories were not
9 verified, and there are two cases with
10 Judge Moore, and Judge Moore has a
11 practice where cases get dismissed
12 automatically and then you can move to
13 reopen them. I don't even want to -- I
14 don't have the order in front of me and I
15 don't want to be accused of
16 misrepresenting the order. There's a
17 certain requirement that I think you need
18 to like schedule something and that order
19 runs even if the defendant has not yet
20 made an appearance and the case gets
21 dismissed automatically.

22 MR. HEARON: You're talking about
23 the two cases with Judge Moore.

24 MR. KOZOLCHYK: Right, and he knows
25 that you can move to reopen the case.

1 MR. HEARON: In Reddish, the case
2 was thrown out and we'll come back to
3 that. In Keefe, what was the monetary
4 damage your client had to pay, ballpark?

5 MR. KOZOLCHYK: I think it was
6 \$1,780.

7 MR. HEARON: Did you have to pay the
8 same amount?

9 MR. KOZOLCHYK: Yes.

10 MR. HEARON: With regard to Judge
11 Moore's order, does it say that you have
12 to do something by a certain point in
13 time, but if it does, can you file
14 something with the court to let the court
15 know that you have been unable to serve
16 the defendant yet?

17 MR. KOZOLCHYK: I don't want to
18 misstate the judge's order and that would
19 suggest that I am not being truthful, so
20 I would rather look up the order than go
21 off on memory.

22 MR. HEARON: Send me the orders
23 you're talking about. You can do it
24 after the hearing.

25 If a lawyer, not you, were looking

1 at the circumstances of the Reddish case,
2 do you think that lawyer could reasonably
3 conclude that your lack of prosecution of
4 the case constituted malpractice?

5 MR. KOZOLCHYK: I don't agree with
6 the judge's order. That's why we filed
7 an appeal. We were going to appeal it.
8 I discussed it with my client and we
9 mutually agreed to just not move forward
10 with it anymore.

11 MR. HEARON: That was not really my
12 question, Mr. Kozolchyk. Putting aside
13 that you dismissed the appeal -- and
14 we'll get to your client in a second.
15 The question I have is after that ruling
16 came out that you were asked about
17 earlier by Mr. Yearick, if that file was
18 taken to a lawyer who did malpractice, do
19 you think a reasonable interpretation of
20 the facts outlined in that ruling could
21 serve as a basis for pursuing a
22 malpractice claim against you? I'm not
23 talking about whether or not they would
24 be successful or not, but whether a
25 reasonable lawyer can file such a

1 lawsuit.

2 MR. KOZOLCHYK: I do not concede
3 that it would not be frivolous. And so,
4 I can't agree to that because it could
5 very well be a frivolous lawsuit if that
6 should ever come. I'm not ready to
7 concede and stipulate to that. If I get
8 sued for malpractice under that case,
9 then it's not -- you're asking me to take
10 the position -- not that I think this is
11 going to occur in the future, but if it
12 were to occur in the future, potential
13 future litigation, and I'd have to look
14 at that lawsuit and make a decision at
15 that time, I'm not ready to say here
16 today that it would not be a frivolous
17 lawsuit.

18 MR. HEARON: How much was your
19 client's claim in the case?

20 MR. KOZOLCHYK: I'm going to look it
21 up right now.

22 The statement of claim filed at the
23 beginning of the lawsuit was for
24 \$14,753.57.

25 MR. HEARON: And that's the case

1 that you in previous answers indicated
2 that you had spent an enormous amount of
3 time on?

4 MR. KOZOLCHYK: Yeah, it's the
5 defendants -- sometimes defendants do
6 litigation where they refuse to settle
7 and they will incur any amount. There's
8 at least one motion for summary judgment,
9 if not two. There was a deposition in
10 the case. A lot of defendants -- some
11 defendants incurred attorneys' fees
12 defending these cases and then -- you
13 know, what am I supposed to do other than
14 prosecute the case?

15 MR. HEARON: I'm just asking the
16 question. I'm not drawing any
17 conclusion. I just wanted to know.

18 Prior to your client agreeing to not
19 pursue the appeal in the 11th Circuit,
20 can I assume, based upon your previous
21 answers, that you did not suggest to him
22 that he could take this matter to a
23 third-party lawyer to look at to see if a
24 third-party lawyer would consider that
25 your representation of him constituted

1 malpractice? Is that a correct
2 assumption by me?

3 MR. KOZOLCHYK: Correct. Was I
4 required to do that? Is there a rule?

5 MR. HEARON: I'm just asking the
6 question. I read the judge's ruling and
7 then you testified earlier that it was a
8 joint decision by your client to not
9 pursue the appeal, and I'm trying to
10 understand what information you had
11 provided to your client that led to your
12 client's agreement to not pursue the
13 appeal? That's why I asked the question.

14 MR. KOZOLCHYK: I will be even more
15 detail with you when I say it was a joint
16 decision. I will tell you exactly how
17 that conversation went.

18 I said that I can appeal it and he
19 said basically that I can appeal it if I
20 want to and that he's okay with not
21 moving forward. He basically put it in
22 my court. He basically left it to me.
23 That if I wanted to pursue the appeal,
24 that I am free to do it on his behalf.
25 If I didn't want to pursue the appeal, he

1 was okay with not moving forward with the
2 appeal.

3 MR. HEARON: If I took the
4 deposition of Ms. Dauz, would she testify
5 that she had been the source of locating
6 any of these rulings or motions that had
7 to be disclosed or did they all come from
8 you?

9 MR. KOZOLCHYK: She would testify
10 that we both looked and that is what we
11 found.

12 MR. HEARON: I appreciate you both
13 looked, but I'm trying to separate you
14 from her. If I asked her how many she
15 found, what would her answer be?

16 MR. KOZOLCHYK: I don't know. I
17 know I found the ones that I reported
18 when the notice of hearing was issued. I
19 know I found those. Which ones she
20 found, beyond that, I don't recall and I
21 don't know what she would say on that.

22 MR. HEARON: Do you recall her
23 finding any of them on her own that you
24 had not discovered?

25 MR. KOZOLCHYK: I mean, the Keefe

1 one, but like she would come to me,
2 "Okay, we need to report it," and I would
3 say, "I would agree." We would both find
4 it on our own. As far as one that she
5 found that I did not see first, I don't
6 recall specifically.

7 MR. HEARON: Tell me what vacations
8 you have taken in the last year. I don't
9 need to know where you went or where you
10 stayed. I'm talking about the length of
11 any vacations you took since this order
12 was entered last October.

13 MR. KOZOLCHYK: July. You're asking
14 for the vacations, like how long was each
15 vacation?

16 MR. HEARON: Yes, sir.

17 MR. KOZOLCHYK: I sometimes take day
18 trips often, but in July, I took a ten
19 day vacation. I usually take a vacation
20 in July.

21 MR. HEARON: Who was monitoring the
22 filings during that ten day period?

23 MR. KOZOLCHYK: I run a mobile
24 office.

25 MR. HEARON: So the answer to the

1 question is you were?

2 MR. KOZOLCHYK: Yes. I'm even
3 taking phone calls while I'm on vacation.
4 I'm even filing things when I'm on
5 vacation. I even did a mediation while I
6 was on vacation.

7 MR. HEARON: Let's go back to the
8 question you passed on. What do you
9 think are the maximum number of cases
10 that you can handle with your present
11 staffing?

12 MR. KOZOLCHYK: The truth is, I
13 don't think that the committee -- it's
14 going to satisfy the committee. The
15 thing is my system and firm is always
16 evolving. Maybe 70 or a hundred. I
17 don't have an answer to that. I'm not
18 trying to not answer your question.
19 You're saying open at any given time, not
20 in a year file, right?

21 MR. HEARON: I'm talking about open
22 at any given time.

23 MR. KOZOLCHYK: I would say 70 to a
24 hundred.

25 MR. HEARON: I have no further

1 questions.

2 I would like you to send me copies
3 of those orders by Judge Moore that you
4 are referring to. I'd like you to take a
5 look periodically since October of last
6 year to tell us the number of open cases
7 you had. You testified today you have
8 44. But I would like to know if you've
9 ever had more than 44 at any given time,
10 check two or three times, between October
11 and the end of the effectiveness of the
12 order.

13 The only other thing I want to do is
14 put on the record a number of disclosures
15 that you had while you were being asked
16 the questions. According to my records,
17 the first disclosure you made was on
18 February 13 of '23, because you spent a
19 good amount of time during 2022
20 communicating with me about complying
21 with other portions of the court's order.
22 The first disclosure under paragraph two
23 that I could find was February 13, which
24 is about a month after the order that
25 Mr. Yearick indicated had been entered in

Maria I. Salum, P.A.

305 746-3079

1 the Reddish case, I guess in January of
2 '23. I had August 30th, September 5th,
3 October 13, October 19, October 31st and
4 then November 2nd, 3rd and 6th. So if
5 there were any that I missed in there,
6 Mr. Kozolchyk, those are the ones that
7 were sent to the committee, and I thank
8 you for your time.

9 I will tell you procedurally
10 depending upon what the committee decides
11 to do. More than likely, I will send you
12 a proposed report and recommendation,
13 which will trigger the procedure under
14 the rule for you to respond in 14 days,
15 okay, before we submit a final report to
16 the court.

17 Any questions about that?

18 MR. KOZOLCHYK: Thank you and thank
19 the committee for your time.

20 MR. HEARON: Okay, thank you. You
21 can sign off, and Maribel, you can sign
22 off as well and we would like a copy of
23 the transcript.

24
25 (Thereupon, the proceedings was

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concluded at 5:35 p.m.)

CERTIFICATE OF REPORTER

Maria I. Salum, P.A.

305 746-3079

1
2
3 STATE OF FLORIDA :
4 : SS.
5 COUNTY OF MIAMI-DADE :
6

7 I, MARIA ISABEL SALUM, Registered
8 Professional Reporter, do hereby certify that
9 I reported in shorthand the proceedings in the
10 above-styled cause before the Ad Hoc
11 Committee, at the time and place as set forth;
12 that the foregoing pages, numbered from 1 to
13 142, inclusive, constitute a true and correct
14 record.
15

16 I further certify that I am not an
17 attorney or counsel of any of the parties, nor
18 related to any of the parties, nor financially
19 interested in the action.
20

21 WITNESS my hand and Official Seal in the
22 City of Miami, County of Miami-Dade, this 20th
23 day of November, 2023.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-MC-21879

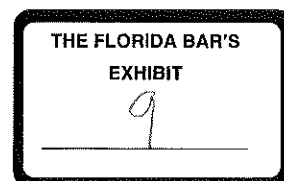
IN RE:

ELLIOT ARI KOZOLCHYK
Florida Bar # 74791

RESPONSE TO PROPOSED SUPPLEMENTAL REPORT AND RECOMMENDATION

I respectfully request the following revisions to the Proposed Supplemental Report and Recommendation ("PSR&R"):

1. Change the reporting requirements to 5 business days instead of 72 business hours. The shorter reporting time increases the risk of unintentionally not complying. More time gives time to review filings and consider whether they need to be reported. If I have a week of trial, or back-to-back depositions, or multiple motions for summary judgment, that additional time could be very helpful.
2. Please remove the public reprimand. My failure to report certain things was not intentional. The issues raised at the second hearing before the Committee were not the subject of the original letter of referral nor original report and recommendation. The original Report and Recommendation was published publicly and now so will the Committee's Supplemental Report and Recommendation. These are de facto public reprimands. I have already taken action to comply with the PSR&R by contacting The Florida Bar's Diversion/Discipline Consultation Service.
3. At the bottom of page 2 and top of page 3 of the second PSR&R, adding an additional sentence explaining that I was unable to obtain my client's signature on the interrogatories because of the client's unavailability due to her living in a different state and having a job that frequently



required her to drive to different states. I take responsibility for my failure and acknowledge that I should have sought an extension of time or noted the lack of signature in the notice of compliance.

4. At top of page 4, my failure to have counsel at the second hearing was solely a financial issue. At all times, beginning a half decade ago, I have considered this matter to be of utmost importance to my clients, myself, and my career.

Respectfully submitted,



Elliot Kozolchyk, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2024, a true and correct copy of this Response to Proposed Supplemental Report and Recommendation was served via email to William C. Hearon, Esq., Chair of the Committee, at bill@williamhearon.com, Catherin Wade at Catherine_Wade@flsd.uscourts.gov, and Todd Alfuth at Todd_Alfuth@flsd.uscourts.gov. This response was previously served on Mr. Hearon in email format on January 8, 2024.



Elliot Kozolchyk, Esq.

William C. Hearon, P.A.
Attorney at Law
3530 Mystic Pointe Drive
Unit 1909
Aventura, Florida 33180
(305) 579-9813
bill@williamhearon.com

January 25, 2024

Via Email Only

The Honorable Cecilia M. Altonaga
Chief Judge, United States District Court SDFL
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue, Room 13-3
Miami, Florida 33128

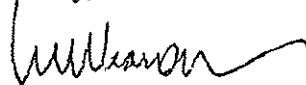
In Re: Elliot Ari Kozolchyk (Fla. Bar #74791)
Case No. 20-MC-21879
Final Supplemental Report and Recommendation

Dear Judge Altonaga:

Attached please find the Final Supplemental Report and Recommendation of the Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee") regarding the referral of Elliot Ari Kozolchyk to the Committee. This Final Supplemental Report and Recommendation pertains to the reporting requirement contained in Administrative Order 2022-94. Mr. Kozolchyk appeared before the Committee on November 9, 2023.

Should Your Honor have any questions regarding the foregoing or the attached or should you need the Committee to be of further service with regard to this matter, please do not hesitate to contact me.

Sincerely,



William C. Hearon, *Chair*
Ad Hoc Committee on Attorney Admissions, Peer
Review and Attorney Grievance

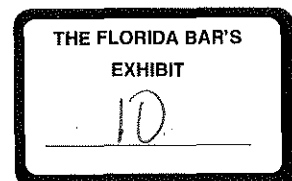
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Enclosure

cc: Clerk's Office

Elliot Ari Kozolchyk, Esq.

David B. Rothman, Esq.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-MC-21879

IN RE:

ELLIOT ARI KOZOLCHYK
Florida Bar # 74791

FINAL SUPPLEMENTAL REPORT AND RECOMMENDATION

**THE AD HOC COMMITTEE ON ATTORNEY ADMISSIONS, PEER REVIEW, AND
ATTORNEY GRIEVANCE FOR THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA**

BACKGROUND

THIS MATTER was initially referred to the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance (the "Committee") by then-Chief Judge K. Michael Moore at the request of Judge Donald M. Middlebrooks and Judge Robin L. Rosenberg by letter dated July 17, 2019 (the "Letter of Referral"), to investigate the conduct of Elliot Ari Kozolchyk, Esq. in multiple cases filed in the U.S. District Court for the Southern District of Florida and to conduct disciplinary proceedings. On May 10, 2022, Chief Judge Cecilia M. Altonaga granted the Committee's second request for an extension of time until September 7, 2022, to consider the matter and submit its final report and recommendation to the Court.

On August 17, 2022 the Committee submitted its Final Report and Recommendation to the Court. Mr. Kozolchyk accepted the recommendations of the Committee, and on October 28, 2022 the Court entered an order adopting the Committee's recommendations. (Administrative Order 2022-94).

Those recommendations consisted of four items, three of which Mr. Kozolchyk completed to the Committee's satisfaction.¹ (See, Committee's March 1, 2023 Report on Mr. Kozolchyk's Compliance with the October 28, 2022 Order).

The one requirement imposed by the Court that had a lengthy duration was contained in Paragraph 2. It stated:

For a period of 12 months from entry of this Order, Mr. Kozolchyk must self-report to the Committee within 72 business hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk.²

At the time of the Committee's March 1, 2023 report, it noted that Mr. Kozolchyk had recently made a disclosure to the Committee on February 13, 2023. Thereafter, Mr. Kozolchyk did not make an additional disclosure until August 30, 2023.

The disclosure made by Mr. Kozolchyk on that date was an Order Granting in Part and Denying in Part Defendants' Motion for Discovery Sanctions in *Keefe v. Britt's Bow Wow Boutique, Inc.*, Case No. 22-cv-62138 on August 22, 2023 (D.E. 53). The Court granted attorneys' fees against Mr. Kozolchyk and his client (*Id.* at 7) in an amount determined later. (See, D.E. 66). The Court also took issue with the fact that Mr. Kozolchyk had filed a Notice of Compliance with

¹ Administrative Order 2022-94, *inter alia*, required Mr. Kozolchyk to attend anger management counseling for a minimum of 25 hours; a requirement that he has completed. The Committee noted that it has not received, nor seen in any of Mr. Kozolchyk's cases, any evidence that the previous behavior that led to this requirement has re-occurred.

² The Committee's Proposed Report and Recommendation contained a 48-hour reporting timeframe. In response, Mr. Kozolchyk requested that he only be required to self-report orders, that he not be required to self-report filings by opposing counsel that alleged problematic or unprofessional conduct, and that he be given 72 hours within which to self-report to the Committee. The Committee modified the time frame to give him 72 business hours, but rejected the other modification, believing that getting prompt notice of filings by opposing counsel would give the Committee timely information rather than waiting for the Court to rule at a later date.

regard to serving certain interrogatory answers, when, in fact, the interrogatory answers were not signed, and therefore not under oath as required under Rule 33. (*Id.* at 4-5).

In addition to failing to timely report the referenced order, Mr. Kozolchyk was asked to confirm that he had failed to self-report to the Committee the August 4, 2023 Defendants' Discovery Memorandum which sought the sanctions. (D.E. 47 at page 3).

In response, Mr. Kozolchyk wrote: "Correct. If I was suppose [sic] to, I apologize."

The Sub-Committee assigned to Mr. Kozolchyk recommended that Mr. Kozolchyk appear again before the Committee so that the Committee could inquire into what was considered as a lack of candor to the Court in the *Keefe* case, in addition to his failure to properly and timely self-report.

On September 27, 2023, the Chair informed Mr. Kozolchyk that the Committee wanted him to appear again before the Committee, offering a selection of possible hearing dates. A Notice of Hearing was sent to Mr. Kozolchyk on October 10, 2023, setting a November 9, 2023 hearing.³ Prior to being notified of the second hearing, Mr. Kozolchyk had only self-reported on February 13, August 30, and September 5, 2023. Thereafter, Mr. Kozolchyk started sending self-reporting emails to the Chair, dated October 13, October 19, October 31, November 2, November 3 (3 separate disclosures), and November 6, 2023.

Prior to the hearing Mr. Kozolchyk was asked to confirm that he had failed to self-report a dismissal for failure to prosecute in *Reddish v. Epoca Corp.*, Case No. 17-21206-CIV-WILLIAMS, 2023 WL 5831459 (S.D. Fla. Sept. 7, 2023) (J. Williams). In response, Mr.

³ The transcript of the November 9, 2023 hearing shall be referenced as "Transcript at p. _____."

Kozolchyk wrote: "I confirm that I did not disclose it. It did not register in my mind to report it until the moment I read your email right now."

Mr. Kozolchyk appeared at the November 9 hearing which was held via video conference.

THE NOVEMBER 9, 2023 HEARING

At the hearing Mr. Kozolchyk further admitted failing to self-report on several cases. (Transcript at page 7). One such example disclosed was *Martinez v. Durcon Construction, LLC*, 23-cv-60722, where a Motion for Sanctions under Rule 11 was filed on June 2, 2023 (D.E. 20), and not reported to the Committee. (Transcript at pp. 10-17). Even though the Motion for Sanctions sought sanctions against the Plaintiff and Mr. Kozolchyk, Mr. Kozolchyk testified "[t]hat again was so not personal to me, it didn't even trigger in my head [to report it]." (Transcript at page 55).

Mr. Kozolchyk admitted that he should have also reported the aforementioned ruling and other orders in *Reddish v. Epoca Corp.* (Transcript at page 29). He stated that "[h]e missed them." *Id.* at 38, 90.

In response to questions, Mr. Kozolchyk raised an issue with the broad and difficult to understand term "problematic" which caused him difficulties when determining what needed to be reported to the Committee.⁴ (Transcript at pages 40, 68, 89-90, 109).

⁴ When Mr. Kozolchyk reviewed the Committee's Proposed Report and Recommendation, *supra* note 2, he never took issue with the use of "problematic." In a November 14, 2023 submittal to the Committee, post-hearing, Mr. Kozolchyk proposed the retention, at his cost, of David B. Rothman, Esq. to act as his mentor. As part of that proposal, Mr. Kozolchyk embraced a reporting procedure that was again tied to "problematic or unprofessional conduct." For these reasons the Committee dismissed his arguments that he was unclear as to what matters needed to be reported to the Committee.

Mr. Kozolchyk's testimony about his various failures to comply with the self-reporting requirements of the Court's Order disturbed many members, especially because he depends almost exclusively on his Federal Court practice for his livelihood. (Transcript at pages 80, 95, 109-112).

Numerous committee members asked questions about the office procedures utilized by Mr. Kozolchyk to comply with the Court's Order about self-reporting. Mr. Kozolchyk is a sole practitioner, with one non-lawyer assistant and three remote, part-time workers. It was clear to the Committee that the primary, if not sole, responsibility for identifying filings or orders that had to be self-reported fell upon Mr. Kozolchyk. The Committee overwhelmingly concluded that office management issues were the likely causes of Mr. Kozolchyk's failure to self-report, or self-report timely, and were quite possibly the reasons for his confrontational issues with opposing counsel due to his failure to address substantive matters and deadlines in his cases. (Transcript at pages 104-108).

Mr. Kozolchyk's answers about the number of his open cases and his opinion as to how many open, active cases his office could handle with his present staffing also raised concerns for the Committee. (Transcript at pages 80-81, 111, 138-139).

CONCLUSIONS

The Committee reached the following conclusions, which serve as the basis for the Committee's recommendations:

- i) Mr. Kozolchyk failed to self-report to the Committee within 72 business hours of the entry of orders and court filings by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk;
- ii) Mr. Kozolchyk failed to timely self-report to the Committee within 72 business hours of the entry of orders and court filings by opposing counsel alleging,

describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk;

- iii) Mr. Kozolchyk's conduct before the Court, especially in the areas of his compliance with court orders and the Local Rules, requires a further extension of the Committee's monitoring of his professional activities; and
- iv) Mr. Kozolchyk's law office management skills need to be reviewed and evaluated, not only for self-reporting purposes, but also for the protection of his clients and their cases. The Committee believes that law office management may better serve the needs identified by the Committee. Notwithstanding that the Committee is not recommending the mentoring process described in Mr. Kozolchyk's November 14, 2023 letter,⁵ the Committee would urge him to nonetheless consider utilizing Mr. Rothman's services as outlined in his November 14, 2023 correspondence to the Committee.

The Committee makes no finding that Mr. Kozolchyk's failure to self-report and his failure to timely self-report, as outlined in (i) and (ii) above, were intentional. As indicated in Conclusion (iv) above, the Committee expects that Mr. Kozolchyk's self-reporting failures may be cured with improved and more competent law office management skills and procedures.

⁵ As previously mentioned, after the hearing Mr. Kozolchyk offered to retain Mr. Rothman to serve as a mentor to review the transcript of the hearing and this Proposed Supplemental Order, to meet weekly to discuss his practice, to report to Mr. Rothman within 72 business hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk and then mentor him on how to address the issue(s), etc.

RECOMMENDATIONS⁶

- 1) Mr. Kozolchyk should be publicly reprimanded for his repeated failure to comply with this Court's October 28, 2022 Order. (Administrative Order 2022-94).⁷ Mr. Kozolchyk should be required to appear before the Chief Judge on a date and time set by the Court in order to receive his reprimand.
- 2) For a period of 24 months, *nunc pro tunc* to October 29, 2023, Mr. Kozolchyk must self-report to the Committee within 3 business days of the entry of any order⁸ describing or relating to any problematic or unprofessional conduct by Mr. Kozolchyk. A monthly report should also be provided to the Committee to ensure that no disclosures have been missed, and if so, an explanation should be provided concerning why the deadline was missed. When Mr. Kozolchyk is traveling or on vacation, such that he cannot fulfill the notification requirements of this section, he should be required to so inform the Committee in advance by requesting that the time frame for reporting

⁶ On December 15, 2023 the Committee served Mr. Kozolchyk and his counsel with a copy of the Committee's Proposed Supplemental Report and Recommendation, as well as a copy the transcript from the November 9, 2023 hearing. Mr. Kozolchyk was informed on the applicable time frame to review and comment. After an extension granted by the Committee, Mr. Kozolchyk submitted his response which was filed with the Court. The Committee has taken his comments into consideration and has made certain modifications to the Recommendation. Two of the items in his Response sought to raise issues that had been raised in the cases below, but were not relevant to the Committee's inquiry.

⁷ Regardless of whether Mr. Kozolchyk's failure to properly self-report was intentional or not, he failed to have procedures in place to ensure that he could comply with this important court-ordered requirement.

⁸ It was brought to the Committee's attention that Administrative Order 2022-94, available on the Court's website, which required Mr. Kozolchyk to self-report the allegations in the filings of opposing counsel, may have given opposing counsel an unfair opportunity to target Mr. Kozolchyk, and thus his clients. For that reason, the Committee decided to require self-reporting as to orders only.

commence upon his return. At the request of the Committee, Mr. Kozolchyk shall appear before the Committee to answer questions regarding his compliance with this section. At the end of 12 months, the Committee may recommend that the reporting requirements be modified, be discontinued or be extended.

- 3) Within 45 days Mr. Kozolchyk shall, at his cost, sign up and take part in The Florida Bar's Diversion/Discipline Consultation Service ("DDCS") which conducts administrative management reviews of law office processes and procedures as directed by a grievance committee. Once retained, DDCS should communicate with the Committee so DDCS can fully understand the concerns of the Committee. The DDCS report shall be submitted to the Committee upon completion, and the Committee may make such other recommendations to the Court as it may determine to be necessary and beneficial to Mr. Kozolchyk's practice in the Southern District.



William C. Hearon, Esq.
Chair
For the Committee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January 2024, a true and correct copy of this Final Supplemental Report and Recommendation was served via e-mail upon Elliot Ari Kozolchyk, Esq. at ekoz@kozlawfirm.com; and upon David B. Rothman, Esq. at dbr@rothmanlawyers.com.



William C. Hearon, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2024-40
CASE NO. 20-MC-21879

IN RE: ELLIOT ARI KOZOLCHYK
FLORIDA BAR # 74791

FILED BY tah D.C.

Jun 4, 2024

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - WPB

ORDER ON FINAL SUPPLEMENTAL REPORT AND RECOMMENDATION

On October 28, 2022, following a regularly scheduled Judges' Meeting, the Court adopted the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance's Final Report and Recommendation of attorney Elliot Ari Kozolchyk, initiated by a letter of referral to the Committee from then-Chief Judge Moore. (*See* Administrative Order 2022-94 [ECF No. 12]). The Order imposed certain obligations upon Mr. Kozolchyk, one which required a lengthy reporting requirement to the Committee:

For a period of 12 months from entry of this Order, Mr. Kozolchyk must self-report to the Committee within 72 business hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk.

(*Id.* ¶ 2).

In a Committee Report [ECF No. 13] filed on March 1, 2023, the Committee informed the Court that Mr. Kozolchyk had complied with the Order. Following that Report, the Committee was made aware that Mr. Kozolchyk failed to properly and timely self-report, and it required Mr. Kozolchyk to appear for a hearing before the Committee on November 20, 2023. After the hearing, on December 15, 2023, the Committee issued a Proposed Supplemental Report and

THE FLORIDA BAR'S
EXHIBIT

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Recommendation [ECF No. 15] giving Mr. Kozolchyk 14 days to respond in accordance with Rule 6(c)(2)(B)(ii) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, Local Rules of the United States District Court for the Southern District of Florida. Mr. Kozolchyk filed a Response [ECF No. 16], and the Committee submitted a Final Supplemental Report and Recommendation [ECF No. 17] on January 25, 2024.

An Order to Show Cause [ECF No. 18] was issued on January 25, 2024, giving Mr. Kozolchyk an opportunity to respond to the Final Supplemental Report and Recommendation. Mr. Kozolchyk filed a Response [ECF No. 19] on February 12, 2024, accepting the Committee's findings and recommendations.

In accordance with Rule 6(c)(2)(B)(v), the undersigned submitted this matter to the Court for its consideration at a regularly scheduled Judges' Meeting held on May 16, 2024. Upon review of the Final Supplemental Report and Recommendation, by unanimous vote of all District Judges and Senior Judges eligible to vote in attendance at the meeting, the Court approved and adopted the Committee's Final Supplemental Report and Recommendation in full.

Given this background, in accordance with Rule 6(c)(2)(B)(v) and the Court's inherent power to regulate membership in its bar for the protection of the public interest, *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it." (alteration added)),

IT IS ORDERED that the Committee's Final Supplemental Report and Recommendation is **ADOPTED**, and the matter is **CLOSED**.

IT IS FURTHER ORDERED, consistent with the Final Supplemental Report and Recommendation, as follows:

1. Mr. Kozolchyk is to be publicly reprimanded for his repeated failures to comply with the Court's October 28, 2022 Order. Mr. Kozolchyk shall appear before the Chief Judge on a date and time set by the Court to receive the reprimand.
2. For a period of 24 months, *nunc pro tunc* to October 29, 2023, Mr. Kozolchyk must self-report to the Committee within 3 business days of the entry of any order describing or relating to any problematic or unprofessional conduct by Mr. Kozolchyk. A monthly report should also be provided to the Committee to ensure that no disclosures have been missed and if so, an explanation should be provided concerning why the deadline was missed. When Mr. Kozolchyk is traveling or on vacation, such that he cannot fulfill the notification requirements of this section, he is required to so inform the Committee in advance by requesting that the time frame for reporting commence upon his return. At the request of the Committee, Mr. Kozolchyk shall appear before the Committee to answer questions regarding his compliance with this section. At the end of 12 months, the Committee may recommend that the reporting requirements be modified, be discontinued, or be extended.
3. Within 45 days of this Order, Mr. Kozolchyk shall, at his cost, sign up and take part in The Florida Bar's Diversion/Discipline Consultation Service ("DDCS"), which conducts administrative management reviews of law office processes and procedures as directed by a grievance committee. Once retained, DDCS should communicate with the Committee so DDCS can fully understand the concerns of the Committee. The DDCS report shall be submitted to the Committee upon completion, and the Committee may make such other recommendations to the Court as it may determine to be necessary and beneficial to Mr.

Kozolchyk's practice in this District.

DONE AND ORDERED in Miami, Florida, this 3rd day of June, 2024.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

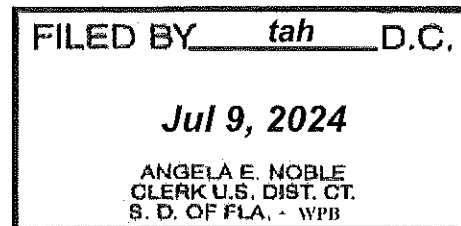
Copies furnished as follows:

c: All South Florida Eleventh Circuit Court of Appeals Judges
All Southern District of Florida District Judges, Bankruptcy Judges, and Magistrate Judges
United States Attorney
Circuit Executive
Federal Public Defender
Clerks of Court – District, Bankruptcy, and 11th Circuit
Florida Bar and National Lawyer Regulatory Data Bank
Library
William C. Hearon, Chair, Ad Hoc Committee on Attorney Admissions, Peer Review,
and Attorney Grievance
David B. Rothman, Counsel for Elliot Ari Kozolchyk
Elliot Ari Kozolchyk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2024-50
CASE NO. 20-MC-21879

IN RE: ELLIOT ARI KOZOLCHYK
FLORIDA BAR # 74791



ORDER

On June 4, 2024, following a regularly scheduled Judges' Meeting, the Court adopted the Ad Hoc Committee on Attorney Admissions, Peer Review, and Attorney Grievance's Final Supplemental Report and Recommendation regarding attorney Elliot Ari Kozolchyk. (See Administrative Order 2024-40 [ECF No. 20]). The Order directed that:

Mr. Kozolchyk is to be publicly reprimanded for his repeated failures to comply with the Court's October 28, 2022 Order. Mr. Kozolchyk shall appear before the Chief Judge on a date and time set by the Court to receive the reprimand.

(*Id.* ¶ 1).

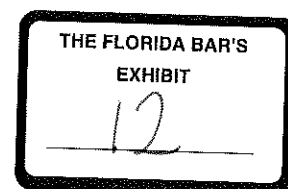
The public reprimand relates to Mr. Kozolchyk's repeated failures to comply with the following requirement of the Court's October 29, 2022 Order:

For a period of 12 months from entry of this Order, Mr. Kozolchyk must self-report to the Committee within 72 business hours of the entry of any order or court filing by opposing counsel alleging, describing, or relating to any problematic or unprofessional conduct by Mr. Kozolchyk.

(Administrative Order 2022-94 ¶ 2 [ECF No. 12]).


Given this background,

IT IS ORDERED that Mr. Kozolchyk shall appear before the undersigned on Tuesday,



August 20, 2024 at 8:30 a.m. in Courtroom 13-3 to receive a public reprimand.

DONE AND ORDERED in Miami, Florida, this 9th day of July, 2024.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished as follows:

c: All South Florida Eleventh Circuit Court of Appeals Judges
All Southern District of Florida District Judges, Bankruptcy Judges, and Magistrate Judges
United States Attorney
Circuit Executive
Federal Public Defender
Clerks of Court – District, Bankruptcy, and Eleventh Circuit
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William C. Hearon, Chair, Ad Hoc Committee on Attorney Admissions, Peer Review,
and Attorney Grievance
David B. Rothman, counsel for Elliot Ari Kozolchyk
Elliot Ari Kozolchyk